FISCAL YEAR 1988 BUDGET AUTHORIZATIONS AND OVERSIGHT FOR U.S. CUSTOMS SERVICE, U.S. INTERNATIONAL TRADE COMMISSION, AND U.S. TRADE REPRESENTATIVE

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

MAY 12, 1987

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FISCAL YEAR 1988 BUDGET AUTHORIZATIONS AND OVERSIGHT FOR U.S. CUSTOMS SERVICE, U.S. INTERNATIONAL TRADE COMMISSION, AND U.S. TRADE REPRESENTATIVE

TUESDAY, MAY 12, 1987

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room B-318, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
WEDNESDAY, APRIL 29, 1987

SUBCOMMITTEE ON TRADE #6
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3627

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON FISCAL YEAR 1988 BUDGET AUTHORIZATIONS AND OVERSIGHT FOR THE U.S. CUSTOMS SERVICE, THE U.S. INTERNATIONAL TRADE COMMISSION, AND THE U.S. TRADE REPRESENTATIVE

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced a public hearing on Tuesday, May 12, 1987, on the FY 1988 budget authorizations for the U.S. Customs Service, the U.S. International Trade Commission, and the Office of the U.S. Trade Representative. This hearing will also provide an opportunity for Subcommittee oversight of the operations of these agencies to determine if they are effectively and efficiently carrying out their legislative mandates. The Subcommittee is particularly concerned about the commercial operations of the U.S. Customs Service and welcomes comments from interested parties on this issue.

The hearing will be held in room B-318 Rayburn House Office Building, beginning at 9:30 a.m.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler [telephone (202) 225-3627] by close of business Thursday, May 7, 1987. The telephone request should be followed by a formal written request to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

-MORE-

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statements to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting a written statement in lieu of a personal appearance should submit six (6) copies of their statement by the close of business Friday, May 15, 1987, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statement distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, before the hearing begins.

SEE ENCLOSED FORMATTING REQUIREMENTS.

* * * * * * * * * * *

Chairman GIBBONS. This is a meeting of the Trade Subcommittee of the Committee on Ways and Means on the fiscal year 1988 budget request for major trade agencies of the United States: The U.S. International Trade Commission, the Office of U.S. Trade Representative, and the U.S. Customs Service.

This hearing will also provide an opportunity for the subcommittee to review and oversee agency operations. The hearing testimony will provide the basis for subcommittee markup of the authorization bill for these agencies as soon as the schedule permits.

Given the limited time available, the witnesses are requested to summarize their testimony, understanding that their entire statements will be presented in the record, as if delivered.

Our first witness is the Chairman of the U.S. International Trade Commission, Ms. Susan Liebeler. I always kind of wonder whether I ought to call you Chairman, Chairwoman, Chair, but we will just stick to Chairman, hoping it is neuter.

Ms. LIEBELER. Thank you. That is just fine.

Chairman GIBBONS. Go right ahead.

STATEMENT OF HON. SUSAN W. LIEBELER, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION, ACCOMPANIED BY RICHARD ARNOLD, DIRECTOR OF FINANCE AND BUDGET; AND JAN SUMMERS, OFFICE OF TARIFF AFFAIRS

Ms. LIEBELER. Mr. Chairman, and members of the subcommittee, this is my first appearance before the subcommittee as Chairman of the International Trade Commission. I thank you for the opportunity to present the Commission's budget request for fiscal year 1988.

Chairman GIBBONS. Well, we are glad to have both you and Mr. Arnold at this proceeding, and just proceed as you wish.

Ms. LIEBELER. I was just about to introduce Mr. Arnold, but since you already know him——

Chairman GIBBONS. Well, good. Yes.

Ms. LIEBELER. He is our Director of the Office of Budget and Finance, and I am lucky to have him seated with me.

Also present in the room are Commissioners Eckes, Lodwick, and Rohr. Vice Chairman Brunsdale is in China on official business.

As you know, the Commission has two primary responsibilities under our trade laws. First, in our quasi-judicial capacity the Commission makes injury and causation determinations under the import relief laws.

Second, the Commission provides assistance, analysis, and fact-finding studies on trade issues to the executive and legislative branches.

The budget request I am presenting today is for $35,386,000, and funds 502 full-time positions. It has been unanimously approved by the entire Commission and we believe provides sufficient funding to handle the tasks for which we are responsible.

The $35,386,000 represents a real increase of $5,486,000 over fiscal year 1987 appropriations of $29,900,000. The increase reflects increases in non-discretionary items, and not an increase in caseload for the Commission. The Commission's workload for import relief cases appears to have leveled off from its precipitous increase in 1982.

The Commission continues to plan for the September 1987 consolidation of all of our agency staff at our new facility at 500 E Street, Southwest. A great deal of planning has gone into this effort, and we are beginning at this time to obligate the funds provided for the move.

The Commission produces a large number of periodic reports on specific commodities, as well as numerous studies and periodic reports to Congress, and the executive branch, on specific industries and trade matters.

One of the most ambitious of our current studies has been requested by the Finance Committee and involves examining the competitiveness of several U.S. industries. The industries included in this study are textile mills, building-block petrochemicals, steel sheet and strip, automotive parts, optical fibers, and oilseeds.

Other studies currently in progress which have been requested by the Congress or the President cover precious metal jewelry and Canadian live cattle and beef.

We recently held a hearing in Billings, Montana on the Canadian cattle study this month. Pardon me, it is already May. So we held the hearing last month. This month, we completed a study of the probable economic effects of the proposed rules of origin which was requested, as you know, by the House Ways and Means Committee.

We are also conducting a study concerning imports under 806.30 and 807.00 of the Tariff Schedules of the United States for the Ways and Means Committee.

Concerning periodic reports, a recent GAO study suggested that the Commission consider reducing the frequency and the number of some of its reports.

We are working with both Congress and the executive branch to ensure that their requirements are met, and at the same time that our resources are being used efficiently and effectively.

Finally, let me emphasize that in preparing the budget, the Commission was aware of the important role it plays in implementing the trade laws, and in providing data and analysis on various trade matters to trade policymakers.

Over 560 pieces of trade legislation have been introduced thus far in the 100th Congress. Many of them have provisions which if they are enacted, would impact the Commission's work.

If we find that we need additional resources as a result of new tasks Congress assigns to us through passage of new trade laws, or because of an increase in caseload, we will not hesitate to ask for additional funding.

I'll be pleased to answer any questions you may have, and thank you for the opportunity to present the Commission's budget.

[The statement of Ms. Liebeler follows:]

STATEMENT OF SUSAN LIEBELER, CHAIRMAN
UNITED STATES INTERNATIONAL TRADE COMMISSION
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
MAY 12, 1987

Mr. Chairman and members of the Subcommittee, this is my first appearance before your Subcommittee as Chairman and I thank you for the opportunity to present the International Trade Commission's budget request for fiscal year (FY) 1988. Seated next to me is Richard Arnold, the Commission's Director of Finance and Budget.

The Budget Request

The budget request that I am presenting today has been unanimously approved by the Commission. Our request totals $35,386,000 and provides for 502 full-time permanent positions, including the 20 additional positions provided by Congress in the FY 1987 Continuing Resolution.

The $35,386,000 represents an increase of $1,486,000 (or 4.4%) over our FY 1987 appropriation. Our FY 1987 appropriation, however, included $4,000,000 for the Commission's relocation, a one-time appropriation which remains available for relocation expenses as they occur. Thus the FY 1988 request represents a real increase of $5,486,000 (18.3%) over the $29,900,000 appropriation for FY 1987 for the operating portion of the budget.

Our budget request includes increases totalling $5,918,000 for three non-discretionary cost items:

> First, approximately $1,084,000 for increased salary costs, including anticipated step increases, promotions and related benefit increases and the January 1987 three percent cost-of-living increase.
>
> Second, approximately $1,381,000 for the increase in retirement costs due to the new Federal Employees' Retirement System.
>
> Third, approximately $3,453,000 for increased space rental costs at our new headquarters to which we will be moving in September 1987.

Finally, the Commission's budget request reflects a decrease of $432,000 for administration and services due to cost-savings in these areas.

This budget would fully support programs at the level authorized for FY 1987. All of our program and operational needs would be fully staffed.

The Commission's substantive responsibilities involve investigations under the import relief statutes and trade and tariff-related studies under Section 332 of the Tariff Act of 1930 (19 U.S.C. §1332). Our investigative workload has declined since its precipitous increase in 1982. In that year, 292 investigations were instituted, almost twice as many as in the previous year. A substantial portion of that increase was attributable to the filing of 92 steel cases. In FY 1985, 239 investigations, including 35 related steel cases, were instituted and in FY 1986, 214 were instituted. The Commission has projected that approximately 244 investigations will be instituted in FY 1987. Data through April FY 1987 reveal that fewer new investigations have been initiated than originally projected. At this time, however, uncertainty over the final form of any new trade legislation and its impact on the workload of the Commission would make any revision of the original estimate premature.

Import Relief Investigations

Investigations under the antidumping and countervailing duty statutes (Title VII) continue to consume a large part of the Commission's resources. Title VII caseload can be counted in various ways. A single petition filed under Title VII is usually given several investigation numbers, one for each foreign country covered by the petition and sometimes one for each separate major product, even though typically a single investigative team does all the work, a single hearing is held, information is collected from the same group of domestic producers, and a single report is produced. When counted by investigation numbers, the Commission instituted 75 Title VII cases through the end of April and we project a total of 160 separately numbered investigations for this fiscal year. In FY 1986, 158 such investigations were instituted compared to 185 in FY 1985.

Since the number of investigations may not reflect the most accurate picture of actual workload, we have also developed statistics on the basis of separate product groups for each petition, which I believe is a better measure of workload than investigation numbers. The Commission instituted a total of 87 product line investigations in FY 1986 compared to 102 in FY 1985. Thirty-two investigations were instituted during the first quarter of FY 1987. Regardless of which system is used, however, approximately 15% fewer dumping and countervailing duty investigations were filed in FY 1986 than in the previous year. Thus the caseload in this area appears to have leveled off.

Some of the agency's more publicized cases are our so-called fair-trade cases. They are so described because petitioners need not allege any unfair trade practice in order to obtain relief. Most of these import relief petitions are filed under section 201 of the Trade Act of 1974 (19 U.S.C. §2251). Under this statute, commonly referred to as the "escape clause," the Commission must determine whether increased imports have been a substantial cause of serious injury, or threat thereof, to a domestic industry. In FY 1986 the Commission decided five section 201 cases involving wood shakes and shingles, apple juice, metal castings, steel fork arms, and electric shavers. The Commission has projected that it will have six fair trade cases both in FY 1987 and in FY 1988. However, as of the seventh month of this fiscal year we have instituted only three such cases. One investigation is being conducted under Section 203 in response to a petition by the stainless steel industry to seek Commission advice on the probable economic effects of terminating the import relief granted to the industry. The Commission is also providing advice to the President under section 203 with respect to the termination of relief for the motorcycle industry. In addition, at the request of USTR, the ITC is conducting an investigation under Section 406 of the Trade Act of 1974 to determine whether rapidly increasing imports of certain tungsten compounds from the People's Republic of China are a significant cause of material injury, or threat of material injury, to U.S. producers of the like product.

Finally, we expect that about 25 percent of our investigative resources will continue to be devoted to cases brought under section 337 of the Tariff Act of 1930 (19 U.S.C. §1337). These cases involve alleged unfair methods of competition and unfair acts in the importation or sale of articles into the United States. These investigations typically involve the infringement of an intellectual property right, such as a patent, trademark, or copyright. Currently, our largest section 337 investigation involves claims by Texas Instruments that ten of its semiconductor patents are being infringed by Japanese and Korean producers. A number of those producers have entered into settlement agreements with Texas Instruments.

We had projected that the 337 caseload would increase to 32 in FY 1987 from 29 in FY 1986. However, as of the first week of May we had instituted only 10 such cases. The slow down in filings may indicate a decline in the use of Section 337. It may be, however, that potential complainants are waiting to see if legislative changes will be made to section 337.

Economic Studies and Reports

The Commission is frequently called upon by the Congress and by the President to conduct investigations on trade and tariff issues under Section 332 of the Tariff Act of 1930 (19 U.S.C. §1332). During FY 1986 the Commission initiated nineteen Section 332 studies in response to requests from the Congress and the President, compared to twenty in FY 1985. The Commission self-initiated one study in FY 1986 and four in FY 1985. All 16 studies currently underway or imminent result from legislative or executive requests.

The most ambitious of the current projects examines several domestic industries. At the request of the Senate Finance Committee, the Commission is studying the competitiveness of six industries: textile mills, building-block petrochemicals, steel sheet and strip, automotive parts, optical fibers, and oilseeds and certain by-products. The Commission has held hearings for these studies. Recently, we held hearings in Billings, Montana on the competitive position of Canadian live cattle and beef in the U.S. market. Other current studies cover precious metal jewelry and standardization of rules of origin.

Recently completed Section 332 studies addressed developing country debt problems, U.S.-Mexican trade, a possible U.S.-Canada free trade arrangement, the Generalized System of Preferences and the effect of tax reform on competitiveness. I have listed here only some of the studies recently conducted or currently underway at the Commission.

The ITC will continue to play an important role with respect to the Harmonized System. We expect that the Commission staff will be called upon to provide technical advice and support for the Article XXVIII negotiations under the GATT relating to the Harmonized System, as well as for ongoing discussions at the Customs Cooperation Council. In anticipation of U.S. implementation of the Harmonized System, we are also preparing for the maintenance of the official version of the U.S. tariff schedule as well as associated cross-references from the current to the new tariff schedules.

The Commission also continues to produce a large number of periodic reports on specific commodities, including heavyweight motorcycles, footwear, rum, brooms and mushrooms, and on the performance of the steel industry. The Commission always provides copies of these reports at no charge to Congress, the Executive Branch, and other agencies. The Commission does, however, incur considerable additional printing, mailing and distribution costs by giving many hundreds of copies to other requestors outside the government. Although some of these reports are done in response to statutory requirements, a recent General Accounting Office study of the ITC has recommended a review of the need for the frequency and extensive distribution of many of the Commission's reports. GAO also recommended that the Commission consider charging user fees as provided in 31 U.S.C. §4701. In responding to these recommendations, we will work with Congress and the Executive Branch to ensure that their needs are met and that the Commission's resources are being used efficiently.

In addition to these reports, we provide numerous background reports on proposed legislation to the Commission's oversight committees. During FY 1986, 107 such reports were provided on proposed legislation, and a great deal of informal assistance was also provided. Forty-six such reports have been provided in FY 1987.

Litigation Workload

Unlike some other agencies, the Commission has authority under 19 U.S.C. §1333(g) to argue its own appeals, rather than referring them to the Department of Justice. The number and complexity of Commission decisions on appeal has increased steadily since the early 1980's, from 39 active cases in January 1984 to 75 in January 1986. The workload appears to have leveled off in a range of 65 to 75 active appeals.

To accommodate this workload, the Commission increased the authorized full-time permanent staff in the Office of the General Counsel from 34 in FY 1986 to 45 in FY 1987. The Office of General Counsel is recruiting actively at this time and with its 45 authorized positions it will be able to meet current and foreseeable needs.

Audit Program

In January 1987, the Commission awarded a contract to institute an ongoing audit program. Arthur Anderson recently completed an audit of our financial accounting system. We have also issued another task order against this contract to perform a comprehensive security risk analysis of the Commission's Automated Data Processing (ADP). During the remainder of FY 1987, we plan to have the contractor review three other areas -- procurement, property management and ADP operations.

General Accounting Office Recommendations

The General Accounting Office made many recommendations during their review of the Commission. Implementation plans have already been developed to correct deficiencies in the areas of procurement and the safeguarding and handling of security information and confidential business information. We are reviewing our Information Resources Management responsibilities, our methods of the verification of data and the need for certain recurring reports. We continue to keep GAO advised of our progress.

Relocation

In September 1987 the Commission will move to our new headquarters at 500 E Street, S.W., where all of our staff will be at one location. We look forward to improved working conditions and appreciate the strong support of our oversight and appropriations committees for this move. The Commission, in close consultation with GSA, is spending the $4,000,000 provided in FY 1987 for relocation expenses. These funds will remain available for relocation expenses incurred after this fiscal year. Based on our experience thus far, the $4,000,000 will be sufficient to meet our requirements.

Conclusion

It is likely that trade and trade legislation will remain in the forefront of public debate for several years. As a result, the Commission will continue to play a very important role in its quasi-judicial determinations under the trade laws. In addition, the independence and expertise of the Commission will continue to attract requests for data and analysis of trade issues. New rounds of trade negotiations begun last year in Punte del Este may create demands for the Commission's comment and advice. The growing demand for sophisticated analysis in import relief investigations and fact-finding studies will require greater expertise in both international trade and industrial organization at the Commission. One step toward this goal is an active in-house training program to improve the skills of the professional staff in economic, financial, accounting and statistical analysis. We have also intensified our efforts to attract first-rate professionals to add to the highly dedicated, skilled staff of the Commission.

It is important that Congress have confidence in our ability to provide sound analysis and data to trade policy makers and at the same time to fulfill our responsibility for investigating claims under the import relief laws. I believe that the Commission's budget request for fiscal year 1988 will provide us with sufficient resources to meet these demands. Additional duties are being contemplated for the Commission. If we find that we need additional resources to accomplish them, we would not hesitate to request additional funds. I will be pleased to answer any questions you may have.

Thank you.

Chairman Gibbons. Well, thank you.

The GAO, in February of 1987, in its report on the ITC, made a number of recommendations for improvement of the ITC management and operations function, information resource management, and administrative matters.

You note in your testimony that you have been making progress in some of these problem areas, highlighted by GAO, including procurement and safeguarding classified information.

Would you please tell us the status of efforts to improve other programs, besides specifically the GAO concern about reliability of data produced in antidumping, countervailing duty, and import injury determinations. Antidumping, countervailing duty, and import injury determinations, the reliability of data. Have you made any progress, or, do you consider this a valid criticism by GAO, or have you made any progress?

Just ramble around, and answer that one, if you can.

Ms. Liebeler. Sure. I would be glad to. I think the GAO report had some very good and constructive criticisms of the Commission, and in connection with the area you have just mentioned, members of my staff, and members of the Office of Investigations have had several productive meetings with representatives from the Department of Commerce concerning verification.

We are also talking to professionals in the auditing division of the IRS to learn about the various techniques that are available to us. This is a new area for us. The Commission has traditionally not verified data.

The acting director of the Office of Investigations is very interested in this matter, and I think the Commission will begin to develop its own procedures and policies for verification.

On the other area that you mentioned, which would be the completeness of the Commission's data that the Commission has, in some areas, such as in section 332 investigations, the Commission has already begun to do some sampling.

We have not moved to sampling in title VII investigations, but that also is under consideration. The response rate that the GAO pointed out, the fact that response rates vary in our various investigations, applies throughout, but particularly in agricultural cases it is very low.

There are literally thousands of respondents in some of those cases, and sometimes the response rates are different than we ordinarily see in title VII cases.

However, it is an important issue. Statistics and accounting offer very useful techniques that the Commission can use to improve our analysis and data-gathering.

We will and are using training programs for the staff to improve the quality of our data-gathering and our analysis, and we will continue to look at those issues.

Chairman Gibbons. In your testimony, on page 9, you state that the ITC litigation workload has increased in recent years because the number and complexity of Commission decisions on appeal has increased steadily since the 1980's, from 39 active cases in January 1984 to 75 in January 1986.

As a result, the number of full-time permanent staff in the Office of the General Counsel has increased from 34 in 1986 to 45 in 1987.

How do you explain the sharp increases in appeals from ITC decisions?

Ms. **Liebeler**. Well, I think there are a couple of things that can explain the increase in appeal rate. Any time you change a statute, it creates fodder for lawyers. As new language is tested and interpreted by parties before the Commission, there is a tendency to seek clarification at the appellate level.

And certainly the 1984 amendments left some questions that ultimately had to be resolved in the courts. There was a time when the appellate process for review of Commission decisions was quite different than it is now, and I believe in 1979, there were considerable changes which facilitated those appeals. Thus we see the growing appeals of Commission decisions.

Chairman **Gibbons**. On page 2 of your testimony, you note that your 1988 budget request reflects a decrease of $432,000 for administration and services due to cost-savings in these areas.

We are always interested in cost savings. How did you accomplish these cost savings?

Ms. **Liebeler**. We are going to be moving to a building that does not take an army to keep working. A lot of our——

Chairman **Gibbons**. Cost savings are in that area?

Ms. **Liebeler**. Yes, are in that area.

Chairman **Gibbons**. Are most of them in that area?

Ms. **Liebeler**. Mr. Arnold, wouldn't you say that most of them are in that area?

Mr. **Arnold**. Mr. Gibbons, much of that is reflected by the fact that we expect our support costs to go down because of the move. The Commission, across-the-board over the past 2 or 3 years because of our rapid growth had built up the budget in expectations of filling positions, and so forth.

We are catching up now, because we have realized that there is a little bit too much in the budget. We are absorbing that back, getting back to meet our actual operational requirements. So the cost savings reflects that, also.

Chairman **Gibbons**. When do you expect to move into this new building?

Ms. **Liebeler**. With luck holding the way it is, we are on schedule for a move in September of 1987.

Chairman **Gibbons**. So you are right around the corner from it now.

Ms. **Liebeler**. That is right, and we hope you are going to come and visit us.

Chairman **Gibbons**. Are you at 5th and E? I am trying to figure out where that is. Is that a new building, or is that a——

Ms. **Liebeler**. It is under construction.

Chairman **Gibbons**. It is under construction.

Ms. **Liebeler**. You cannot miss it if you drive around the area. The building has a very distinctive look to it.

Chairman **Gibbons**. Is that the one right across from Hogate's, or is that——

Ms. **Liebeler**. No. I do not think so. What is it right across from?

Mr. **Arnold**. It is catty-corner to where the Wax Museum used to be.

Chairman **Gibbons**. Oh, yes.

Mr. **Arnold**. Has everybody been to the Wax Museum?

Chairman **Gibbons**. Underneath the railroad track?

Mr. **Arnold**. Yes.

Chairman **Gibbons**. Yes. So on 4th Street, you go under the railroad track?

Mr. **Arnold**. Right. It is about four blocks, just down from your left shoulder there. It is about four blocks from here, I think.

Chairman **Gibbons**. Well, good. I will have a chance to walk by it every afternoon if I walk home. I can in the daylight, but not in the dark. All right. Fine. Mr. Schulze.

Mr. **Schulze**. Thank you, Mr. Chairman, and thank you, Madam Chairman for appearing this morning with your testimony.

I wish you well in moving into your new building, and getting there on time. I think you have done an exemplary job under difficult conditions in that building. Yours has been a record of growth, and it is not always easy to keep your finger on everything, and keep control of everything in a growth situation.

I think the last time I was before you, I said to you that you are the "only game in town". That may change with the trade bill going through, but I think you have done an outstanding job. I hope the move is on time, and is relatively smooth, and does not disrupt your procedures.

Ms. **Liebeler**. We are trying very hard to see that that is the case.

Mr. **Schulze**. It seems to me, that one of your problems is in gathering good information upon which to base decisions. There was some criticism of your questionnaire form. Have you given any thought, or opened any doors on how to improve that information-gathering system?

Ms. **Liebeler**. Some thought has been going into that at the Commission, and perhaps I can tell you some of the things we have done, and some of the things we plan to do.

The Commission staff has met with the GAO staff to discuss questionnaire design. There are people at GAO who have some expertise in this area, and they have shared that expertise with us. We plan to give GAO a draft of a new standard format for review this month, and after their comments are accommodated, or at least evaluated and perhaps accommodated, whatever changes come out of that process should be in use at the Commission in new investigations I would guess, by June.

OMB does not review individual title VII questionnaires; it has precleared the standard form. On section 332 studies, however, our questionnaires are reviewed by the Office of Management and Budget in connection with the Paperwork Reduction Act, and they have made some very constructive suggestions about how questionnaires can be improved.

The Office of Industries is also looking for a questionnaire consultant to retain on a short-term basis to evaluate Commission questionnaires and to make some appropriate suggestions for improvement.

Mr. **Schulze**. Have you discussed this with the private sector, and have they had any input, or——

Ms. **Liebeler**. The Commission, in its investigations often field tests its questionnaires. We have encouraged the staff to do that more, in order to involve the private sector in an evaluation of the questionnaire before it's utilized, so that any kinks and/or problems can be identified in enough time that they can be handled. This is something we will continue to do.

Mr. SCHULZE. Are there certain types of companies who tend to neglect responding to questionnaires, small or medium-sized companies, for example?

Ms. LIEBELER. Well, I think it depends on a lot of things. Obviously, it is going to depend on the stake of the company in the outcome of the procedure. A small stakeholder probably does not have the same incentive as a large stakeholder. At the same time, perhaps a small business without a big eight accounting firm on a retainer to assist it might be less willing to fill out the questionnaire.

Let me mention just for a moment, if I might, that the Commission sometimes hears complaints from industries about its questionnaires. I would hope the Commission is sensitive to these complaints and we can look at our questionnaires and make them less confusing, hopefully shorter, more clear and less burdensome to the people surveyed.

Mr. SCHULZE. I wish you success in that because, as I stated before, you must get the information in order to make the correct decisions, and I hope that the minor problems can be ironed out.

Again, I congratulate you on the job that you have done and wish you success in the future.

Ms. LIEBELER. Thank you very much.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. Yes, thanks, Mr. Chairman.

Since the advent of the new trade bill, do you see a reapportionment of your resources, and different emphases in certain areas, in 201, or AD, or CVD, et cetera, that you have to relook at the way you are structured?

Ms. LIEBELER. The Commission will evaluate its resources very carefully when the exact shape of the new trade law is clear. I think it is a little early for us to know exactly how that impact will be felt.

For example, if the changes to section 337, the intellectual property area of our jurisdiction, were to be enacted, it is not clear exactly what the impact would be.

We might have a lot more cases, but they might be a lot easier for the Commission to handle, or the new law might have a deterrent effect and we might not have more cases. So it is very hard to project exactly, what the effect on our workload will be because the exact shape of the trade legislation is not known.

Mr. GUARINI. But chances are, you will have more to do because there are new remedies, and they are reformed. The idea is to monitor more carefully and to get involved more deeply in weeding out unfair trade practices.

So I assume that ITC will have additional jurisdiction, additional cases than they have had before. Is that a fair statement?

Ms. LIEBELER. It is a reasonable and good guess of what will happen, but, again, it is possible that new trade legislation will be so effective that our caseload will not change significantly.

Mr. Guarini. Where do you spend the largest part of your resources now, in investigation? The CVD, or antidumping, or 201? Where is most of the money and resources placed today?

Ms. Liebeler. Mr. Arnold. I do not know if you heard that question. On a dollar basis, on our dumping and CVD cases——

Mr. Guarini. Yes. If you had to break down the cost of operating your department, what would your breakdown be of the various jurisdictions that you have charge of?

Ms. Liebeler. CVD? I would guess it would be CVD and dumping cases, but I am trying to come up with a more precise number for you.

Mr. Arnold. And where the costs are now?

Mr. Guarini. Yes.

Mr. Arnold. Well, our major costs are in the antidumping and countervailing duty areas, unfair practices, and our section 332 studies. Those are our largest resource areas.

Mr. Guarini. And could you give a percentage as to what you think, moneywise, is being spent in those areas?

Ms. Liebeler. I cannot provide percentage figures for you right now. Well, because of fast staff work I can do it right now.

Mr. Guarini. Fine. Thank you.

Ms. Liebeler. There seems to be another column in this table I was just handed.

Mr. Guarini. See what happens when you are organized well.

Ms. Liebeler. That is right.

Mr. Guarini. It is easy.

Ms. Liebeler. Well, I wish I could take credit for the organization of this table, but I must give the credit to the gentleman on my left.

For fiscal year 1987 antidumping and countervailing duty investigations, the percentage is 12.8 percent; for unfair practices, 8.9 percent; for section 332 studies, 15.5 percent. There are some smaller items, which I do not think you are interested in, but I would mention that import injury cases are 2.8 percent.

Mr. Guarini. We only got up to about 40 percent.

Ms. Liebeler. That is right. A significant portion of our budget goes for other things. If you would like a breakdown by percentage, I can give it to you.

Mr. Guarini. Well, but just give me an idea, what are the other things.

Ms. Liebeler. Oh, for example, 11.8 percent of the funding goes into relocation.

Mr. Guarini. You mean relocating your office?

Ms. Liebeler. That is right. This year.

Mr. Guarini. That is just this year. All right.

Ms. Liebeler. That is right.

Mr. Guarini. That is a one-shot deal?

Ms. Liebeler. That is right. Executive direction is 7.7 percent, administration is 8.5 percent. Information resources management, which includes ADP and word processing, 5.3 percent. Professional data analysis is 3.6 percent. My staff tells me this is the collection and review of outside professional material and employee attendance at various continuing education programs.

Mr. **Guarini**. Well, now, you are essentially itinerant, aren't you, in many ways? You have your office here. Are you caused to do a great deal of travel?

Ms. **Liebeler**. We do some traveling. We hold some of our hearings, particularly in Section 332 cases, away from the Commission. In addition, outside the hearing context, our investigators, and sometimes the Commissioners, travel to production facilities.

Mr. **Guarini**. You send questionnaires overseas, et cetera. Do you send your personnel overseas very much?

Ms. **Liebeler**. We have not sent our personnel overseas very much in the past. They do go from time to time, but I can tell you it is increasing.

Mr. **Guarini**. It is?

Ms. **Liebeler**. Yes.

Mr. **Guarini**. Now inasmuch as trade from the Far East is the major part of the emphasis now, and is growing greater than trade from Europe—we are here in Washington, on the east coast—but do you perceive that there should be a reemphasis of where you hold your hearings and how you are going to conduct your business in the future, since it is projected that we will have twice as much trade from the Far East than we will have from Europe by the year 2000, according to some statistics I have seen?

But is that going to change our whole view as to how we centralize our offices?

Ms. **Liebeler**. I am not sure that it will. I will share with you my own experience when we hold out-of-town hearings, I think it is very useful for the Commission to go to the site of the various topics we are investigating. But frequently, when I get on the plane in Washington, the plane is full of Washington lawyers. We live in a society where Washington lawyers represent a large portion, although not all, of the people who appear before us, and it may not be cost-efficient to hold more out-of-town hearings.

It may cost petitioners more to move those hearings away from Washington.

Mr. **Guarini**. It is just that the lawyers will have their offices in LA, or some other place?

Ms. **Liebeler**. Well, perhaps over time.

Mr. **Guarini**. Right. One last question. Petitions are made with the ITA and you at the same time. I know that we have got a structure that has been set up for many years. Is there much duplication of activities, work, in doing an antidumping or a countervailing duty, or a 201 case, et cetera?

Ms. **Liebeler**. I do not think so.

Mr. **Guarini**. You think that we have reached our maximum efficiency and make maximum use of our resources, that there is not an overlapping of work?

Ms. **Liebeler**. We look at different issues and I do not believe there is significant overlapping.

Mr. **Guarini**. But it is the same case. It is the same file.

Ms. **Liebeler**. It is different data, though, sir. The Commission is not concerned with the amount of the subsidy, or the amount of the dumping.

Mr. **Guarini**. But as a lawyer, if I had to go on one side of the street to a forum for liability, had to go to another side of the street to another forum for damages, I would assume that I would have more expense involved in trying and hearing my case.

Ms. LIEBELER. I am not sure that is right in this case, although obviously, there may be some area where we could do it better. Frequently, when there is a real problem like that you hear about it from the bar, or from the parties. It is not an area of complaint.

However, by the same token, it may be efficient I think because the issues are bifurcated, you can bifurcate the process. You could also unitize it, should you choose to do so. I am not sure what the cost savings would be.

Mr. GUARINI. Are we making maximum use of the Court of International Trade? You have jurisdiction, the ITA has jurisdiction, Federal district court has jurisdiction. The Court of International Trade has jurisdiction. Are we in a mosaic as to how we administer justice and investigate, have our finding, our conclusions, on all of these various jurisdictional items that you have, by having a myriad of quorums, and a myriad of investigation agencies?

Ms. LIEBELER. Well, that is a tough one to answer, and the Commission would not take a position on an issue like that, obviously.

Mr. GUARINI. Fair enough.

Ms. LIEBELER. There are a series of law review articles discussing the utility of the Court of International Trade's jurisdiction, and I would not presume to take a position on those issues. It has been argued on both sides, one, that the Court of International Trade is primarily generally a trial court and it is odd to give it appellate jurisdiction over our cases, which is different from the rest of its jurisdiction, and it has been suggested that that could be eliminated.

On the other hand, others argue that the Court of International Trade review of ITC cases is very useful.

Mr. GUARINI. So there is some question as to whether or not we are getting the maximum efficiency out of our——

Ms. LIEBELER. Well, if you read the journals, that is suggested, but there are arguments on both sides of that issue.

Mr. GUARINI. Thank you very kindly.

Ms. LIEBELER. Thank you.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Madam Chairman, in the hearings on trade legislation last year, it came to the committee's attention that in material injury determinations you have used, or were using a so-called five-factor test which, "when viewed together serve as proxies for the inquiry that Congress has directed the Commission to undertake".

As I construe the statute, there is no room for proxies for the criteria Congress laid out, and this point has recently been underscored by section 154 of H.R. 3, which passed this committee by an overwhelming bipartisan vote.

Are you still using the five-factor proxy test in your determinations?

Ms. LIEBELER. I use a five-factor test in my analysis but I do not use proxies in the sense that a proxy is a substitute for the statutory criteria. A proxy can also be a signal or a sign for something else.

With hindsight, there were lots of other synonyms I could have used instead of the word proxy, and it was perhaps a poor choice of words.

Mr. **Pease**. You think it was an inelegant choice of words, then. So that you still do consider the statutorily required factors, volume of imports, effect of imports on prices in the United States, and so on?

Ms. **Liebeler**. Oh, yes, sir. Always have.

Mr. **Pease**. How much weight do you apply to the five-factor test in comparison with the other statutorily required factors?

Ms. **Liebeler**. The five-factor test that I use primarily deals with causation, and it is a way of looking at the various factors listed in the statute.

For example, let's talk about something that you alluded to, price undercutting, or, if you want to call it underselling. Or price depression. None of these are observable with the naked eye. You cannot find them by just looking at prices.

You have to go at it another way, and sometimes you have to look at something else as a signal that that is taking place. I would not say that I disregard certain factors and consider only others.

And it depends very much on the particular case in front of me, and what the particular issues presented are, on the basis of a very complicated record.

Mr. **Pease**. Well, I raise the point because I think basically we have a trade bill before us this year and we did last year, because of the feelings of business people, not others, but major corporations in America, that it was not really worthwhile pursuing cases under our trade remedy laws because they were not likely to give relief anyhow, and why bother to do it?

And it was really business groups that came to us last year, and again this year, with suggestions for tightening up our trade laws, taking authority away from the President, and so on. Last year, during the hearings, I expressed some concern because of a chart we had that purported to show the results of the last 20 dumping and countervailing duty cases that had been considered prior to that time. And you seemed to be decidedly out of step with the rest of the Commission, or else they were out of step with you, and maybe that was the correct way to look at it.

But in those 20 cases, Ms. Stern ruled 12 yes and 8 no; on material injury, Eckes, 16 yes and 4 no; Lodwick 12 and 6; Rohr 14 and 6; and you came in at zero and 16, and other four where you split, I guess. And your colleague, Ms. Brunsdale, came in at 5 and 8. And on 201 cases, similarly, most of the others, by at least a slight margin, found injury even though it is a more difficult test, but you found injury in only one out of five cases.

I guess my question is, if we were to compile a similar chart for dumping and countervailing duty cases, and section 201 cases, that had been decided in the last year, what kind of a pattern would that chart show?

Ms. **Liebeler**. I have not looked at the cases the way you suggested, and I am not familiar with the 20 cases that you just had. I have looked at my own voting record, overall. I have not analyzed my colleagues' voting records closely, although I read Commission opinions, and I obviously participate in cases, so I am aware that sometimes I do not agree with my colleagues.

I think all of us have different backgrounds, and different training, and different experience. I can answer questions about my own voting record, and I am pleased to do so——

Mr. **Pease**. Well, I can appreciate that. We are on this side of the table, very conscious of our own voting records as well. But when we vote yes or no on the floor of the House, or in committee, we are usually aware of whether most of our colleagues are voting with us or against us.

And I guess that is my question to you. On these decisions that have been rendered in the last year, are you usually in the minority or the majority?

Ms. **Liebeler**. Overall, I vote with the rest of the Commissioners 65 percent of the time.

Mr. **Pease**. Could you supply to the committee, for the record, a chart showing all of the dumping and countervailing decisions rendered in the, say, last year, and also 201 decisions, and show us what the record was of yes votes and no votes for each member of the Commission.

Ms. **Liebeler**. Sure. We would be pleased to do that.

Mr. **Pease**. I would be happy to have that from you.

[The following was subsequently received:]

Tables of votes

May 1986 - April 1987

Commissioner Paula Stern

Type of Investigation	Affirmative	Negative	Split Vote	Did Not Participate
Escape Clause (Sec. 201, TA 74)	0	2	1	0
Countervailing duty:				
Title VII, TA 30:				
Preliminary	10	1	0	3
Final	1	6	0	4
Sec. 303 (TA 30):				
Preliminary	2	0	0	0
Final	0	0	0	0
Antidumping (Title VII, TA 30)				
Preliminary	37	1	0	13
Final	16	7	0	16
Review	0	1	0	0

Commissioner Susan Liebeler

Type of Investigation	Affirmative	Negative	Split Vote	Did Not Participate
Escape Clause (Sec. 201, TA 74)	0	3	0	0
Countervailing duty:				
Title VII, TA 30:				
Preliminary	9	5	0	0
Final	0	16	0	0
Sec. 303 (TA 30):				
Preliminary	2	0	0	0
Final	0	1	0	0
Antidumping (Title VII, TA 30)				
Preliminary	33	22	0	0
Final	7	39	2	0
Review	0	1	0	0

Commissioner Anne Brunsdale

Type of Investigation	Affirmative	Negative	Split Vote	Did Not Participate
Escape Clause (Sec. 201, TA 74)	0	3	0	0
Countervailing duty:				
Title VII, TA 30:				
Preliminary	11	3	0	0
Final	1	14	0	1
Sec. 303 (TA 30):				
Preliminary	2	0	0	0
Final	0	1	0	0
Antidumping (Title VII, TA 30)				
Preliminary	37	18	0	0
Final	14	33	0	1
Review	0	1	0	0
Commissioner Alfred E. Eckes				
Escape Clause (Sec. 201, TA 74)	0	2	1	0
Countervailing duty:				
Title VII, TA 30:				
Preliminary	14	0	0	0
Final	10	2	4	0
Sec. 303 (TA 30):				
Preliminary	2	0	0	0
Final	0	0	1	0
Antidumping (Title VII, TA 30)				
Preliminary	54	1	0	0
Final	40	4	4	0
Review	0	1	0	0

Commissioner Seeley G. Lodwick

Type of Investigation	Affirmative	Negative	Split Vote	Did Not Participate
Escape Clause (Sec. 201, TA 74)	0	3	0	0
Countervailing duty:				
Title VII, TA 30:				
Preliminary	13	0	0	1
Final	10	3	3	0
Sec. 303 (TA 30):				
Preliminary	2	0	0	0
Final	0	0	1	0
Antidumping (Title VII, TA 30)				
Preliminary	44	10	0	1
Final	32	10	6	0
Review	0	1	0	0

Commissioner David B. Rohr

Escape Clause (Sec.201, TA 74)	1	1/ 2	0	0
Countervailing duty:				
Title VII, TA 30:				
Preliminary	13	1	0	0
Final	8	3	5	0
Sec. 303 (TA 30):				
Preliminary	2	0	0	0
Final	0	0	1	0
Antidumping (Title VII, TA 30)				
Preliminary	39	16	0	0
Final	32	10	6	0
Review	0	1	0	0

1/ Did not participate in part of one case.

Mr. **Pease**. Now in H.R. 3, we have some language clarifying existing law—at least clarifying congressional intent—with respect to ITC's injury analysis determinations.

I think it says something that Congress feels a necessity to clarify our intent, but I would like to read you the four items that we have, and have you tell me whether you basically agree with us, or not, whether your current decision patterns are consonant with these, or whether this would cause you to have to change your way of looking at things.

First, the amendment "clarifies current law and congressional intent, that in every case, the Commission is required to consider all three factors of volume, price, and impact".

I gather from your answer before, you would say that you do that now, is that right?

Ms. **Liebeler**. Yes, sir.

Mr. **Pease**. So that would not cause you any problems, if we put that in the law?

Ms. **Liebeler**. Whatever you put in the law will not cause me problems, but I do that now, and it would not cause me to change my practice.

Mr. **Pease**. Okay. And I presume that whatever we change, put in the law, you will abide by and change your practice?

Ms. **Liebeler**. Of course.

Mr. **Pease**. I am trying to avoid mental anguish for you, so that is what I am really after.

Second, the provision amends section 771(c)(2) to replace the term "price undercutting" with the term "price underselling" to clarify that no evidence of predatory pricing practice is required.

Is that consonant with what you are currently doing?

Ms. **Liebeler**. I have stated in many Commission opinions, that the kind of data that the Commission collects and calls underselling is not probative of price undercutting, nor would it ordinarily be probative of underselling.

We collect transaction prices and compare them for the most part. However, I have talked about a scenario similar to—a predatory scenario, although we do not require predatory intent, or anything like that, and have gone affirmative in many cases in which there has been no evidence at all of predation.

But I would no longer use or discuss my analysis, in the same way. One could not do so. It would be very clear.

Mr. **Pease**. Okay.

Ms. **Liebeler**. And I would change my analysis of underselling accordingly, should you——

Mr. **Pease**. You would. Third, "section 771(c)(3) is amended to clarify that the industry's health should be determined in relation to that particular industry, not in relation to other industries, or to manufacturers as a whole".

How about that? Is that consistent with your current thinking and current decisions, or not?

Ms. **Liebeler**. To answer that I would have to go through a list of cases because sometimes, the Commission does look at comparable industries, as do I, to see how they are doing. Although I would have to look at the language in those cases very carefully. It is not particularly inconsistent, although it may be inconsistent with something I may have done in one or two cases.

Mr. **Pease**. I see. Can you give us a memo on that when you have had a chance to look through the cases?

Ms. **Liebeler**. Yes.

[The following was subsequently received:]

I asked my General Counsel to provide me with a computer search to determine the number of dumping and subsidy investigations in which one or more Commissioners made an explicit comparison between domestic industry data and more general industry financial indicators. A copy of the memorandum from the General Counsel describing the results of that search is attached. Please note that according to the General Counsel's search, I examined indicators for durable goods in *Operators for Jalousie and Awning Operators from El Salvador*, Inv. No. 701-TA-272 (Preliminary), 731-TA-319 (Preliminary), USITC Publication 1843 (May 1986).

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

GC-K-123

MEMORANDUM

TO: Chairman Liebeler

FROM: Lyn Schlitt, General Counsel

RE: Examination of instances in which Commission has used general industry data to compare with specific domestic industry

DATE: May 22, 1987

Pursuant to your request, a computer search was performed by the Office of the General Counsel to determine the number of dumping and subsidy investigations in which one or more Commissioner made an explicit comparison between domestic industry data and more general industry financial indicators (e.g., operating margins for "all manufactured products" or "all durable goods"). The search revealed four instances in which such comparisons were made. This list may not be exhaustive because Commissioners may have used words in particular investigations that were not used as search terms.

1) Carbon Steel Products from Belgium, Federal Republic of Germany, France, Italy, Luxembourg, The Netherlands, and The United Kingdom, Inv. No. 731-TA-18-25 (Preliminary), USITC Publication 1064 (April 1980)

-- See Views of Vice Chairman Alberger at 15 (comparing net sales ratio for hot-rolled steel sheet to average for all manufactured products).

Commission vote: Affirmative
Vice Chairman Alberger's vote: Negative

2) Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, Inv. No. 731-TA-53-56 (Preliminary), 701-TA-86-144, 146-147 (Preliminary), USITC Publication 1221 (February 1982)

-- Views of Commissioners Alberger, Calhoun, Stern at 92 (comparing profit ratio for cold-formed alloy steel bar with manufactured and durable goods).

Commission vote: Negative
Commissioners Alberger's, Calhoun's, Stern's vote: Negative

-- Views of Commissioner Frank at 133 (comparing hot-rolled alloy steel bar operating returns to manufactured and durable goods figures).

Commission vote: Negative
Commissioner Frank's vote: Affirmative

3) Fresh Cut Roses from Colombia, Inv. No. 731-TA-148 (Final), USITC Publication 1575 (Sept. 1984)

-- Views of Commissioners Stern, Lodwick, Rohr (comparing rose prices to purchasers price index for consumer nondurables).

Commission vote: Negative
Commissioners Stern's, Lodwick's, and Rohr's vote: Negative

4) Operators for Jalousie and Awning Operators from El Salvador, Inv. No. 701-TA-272 (Preliminary), 731-TA-319 (Preliminary), USITC Publication 1843 (May 1986)

-- Footnote 19 - Commissioners Liebeler and Brunsdale (noting that performance indicators while declining are higher than indicators for durable goods)

Commission vote: Affirmative
Commissioners Liebeler's and Brunsdale's vote: Affirmative
Note: Commission made a negative determination in the final investigation

Mr. **Pease**. Finally, "section 154 clarifies that in assessing the impact of imports on domestic producers, the ITC only consider the domestic production facilities and operations of domestic producers".

How does that comport with what you are currently doing?

Ms. **Liebeler**. Again, for the most part it comports. There may have been a few cases where it does not comport. Were the change made, I would of course abide by it. I am trying to think if there may not have been a case or two where I may have done differently, but ordinarily, that is not that different than what I do.

Mr. **Pease**. Do you acknowledge or agree with my statement earlier, that a number of American corporations over the last several years have had the feeling that it was not worth their while to pursue antidumping cases, countervailing duty cases, section 201 cases, because of the low probability of their receiving any relief?

Ms. **Liebeler**. Well, that would be a very hard one for me to answer, Mr. Pease, because I sit in a chair where all I do is hear people that think it is worth the investment, and you probably sit in a chair where you hear from a lot of people who think it is maybe not worth the investment.

So the input that I have is probably quite different than what you have, and I would not be in a position to disagree with you, or agree with you.

Mr. **Pease**. Well, do you think that if that impression is abroad—let's assume for a moment that it is—that that is a bum rap for the ITC?

Ms. **Liebeler**. Well, the Commission certainly has voted in favor of import relief in a significant number of cases.

Mr. **Pease**. Significant. Does that mean half, more than half, less than half?

Ms. **Liebeler**. Well, there are all kinds of ways to look at the numbers, but one way in which the numbers have been looked at would be to take a look at all CVD and dumping cases that are filed.

Mr. **Pease**. Yes.

Ms. **Liebeler**. Some of those are terminated by the Department of Commerce. The Commission, I believe, votes affirmatively on approximately 40 percent of all CVD and dumping petitions, but one must remember that not 100 percent of the petitions reach a commission vote because of the Department of Commerce's role.

Mr. **Pease**. Sure.

Ms. **Liebeler**. That is a significant number.

Mr. **Pease**. Sure. Earlier, I asked you to compile a little chart showing how all the members of the Commission, individually, have voted in cases filed in the last year.

The report that I have, that I quoted from, was from last spring, and it purported to show what committee votes and individual members' votes had been on the last 20 countervailing duty and dumping cases decided prior to last spring.

Could I ask you, or would you mind checking to see whether that report is correct or not?

Ms. **Liebeler**. Could we have a copy of that report?

Mr. **Pease**. Sure.

Ms. **Liebeler**. My staff will get it from your staff.

Mr. **Pease**. I would be happy to do that, and if you could just verify whether those figures are correct or not, it would be helpful to me.

Ms. **Liebeler**. Sure. I will be pleased to.

[The following was subsequently received:]

The Commission Secretary, Kenneth R. Mason, attempted to confirm the voting records set forth in the chart. A copy of his May 22, 1987 memorandum to me is enclosed.

Mr. Mason was unable to confirm the accuracy of the information contained in the chart. The voting record for the Commission and individual Commissioners for five Section 201 votes are incorrect. In the five Section 201 votes in which Vice Chairman Brunsdale has participated, the Commission voted affirmative once and negative four times (not 2-3 as in the tabulation you furnished me).

I am also unable to confirm the accuracy of the voting record concerning the Title 7 cases shown on the chart. Mr. Mason could not reconcile any 20 dumping and subsidy cases with the number of abstentions indicated.

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

May 22, 1987

MEMORANDUM

To: Chairman Liebeler

From: Kenneth R. Mason
Secretary

Subject: Check on the accuracy of Commissioners' voting record

Pursuant to your request, I have attempted to verify the accuracy of the Commissioners' voting records relied on by Congressman Pease at your budget testimony before the Ways and Means Committee on May 12. I can draw no conclusion as to the accuracy of the votes on the twenty antidumping and countervailing duty cases. It is also my conclusion that these voting records do not accurately reflect the Commissioners' voting records covering the five Section 201 cases voted on during fiscal year 1986.

Having examined the Commissioners' voting records on title VII cases, I believe that the voting records to which Congressman Pease referred probably were derived from different time periods. The table does not indicate the names of the actual cases, or an exact time period during which the votes occurred. The table, however, is footnoted to indicate the number of abstentions of Commissioners Brunsdale and Lodwick during the time period. I attempted to replicate the time period by determining when these two Commissioners had approximately the number of abstentions attributed to them. There is no period during which twenty title VII votes occurred for which the abstentions could be reconciled.

With respect to the data on section 201 votes, the tabulation shows five votes for Vice Chairman Brunsdale. The Commission voted affirmative once and negative four times in these five investigations (not 2-3 as in the tabulation). I list below the voting record for the Commission and each individual Commissioner for the five section 201 votes:

	affirmative	negative	partial	comparison with with chart provided by Congressman Pease
Stern	1	3	1	[not 3-2]
Liebeler	0	5		[not 1-4]
Eckes	1	3	1	[not 3-2]
Brunsdale	0	5		[not 1-4]
Rohr	2	3		[accurate]
Lodwick	1	4		[not 2-3]
Commission	1	4		[not 2-3]

For your information, I also note that in the one case where an affirmative determination was made (Wood Shingles and Shakes, TA-201-56), former Chairwoman Stern was not part of the majority that recommended the imposition of tariffs. Instead, she recommended adjustment assistance as the appropriate remedy.

The information relied on by Congressman Pease is attached.

April 1986

	COMMISSION	STERN	LIEBELER	ECKES	LODWICK	ROHR	BRUNSDALE
LAST 20 AD/CVD	13-7	12-8	0-16-4[1]	16-4	12-6[2]	14-6	5-8[3]
LAST 5 Sec. 201	2-3	3-2	1-4	3-2	2-3	2-3	1-4

[1] In four cases, Liebeler found two like products and voted in the affirmative on one and negative on the other.

[2] Lodwick did not participate in two of the cases.

[3] Brunsdale did not participate in seven of the cases.

Mr. **Pease**. I was somewhat concerned last year because if your decision had been the majority decision in each case, then there would not have been injury found in any case, 100 percent of the last 20 cases filed, and it seems to me that would certainly contribute, or might contribute to an impression among American business people that it was not worth their while to file cases.

Ms. **Liebeler**. Well, I can assure you that I have not been in the majority all that many times.

Mr. **Pease**. Well, you are now the Chairman of the Commission, and as such, I am sure you influence your colleagues, they look up to you, and they are more likely to follow your lead, and it is for that reason that I am asking these questions.

Chairman **Gibbons**. I do not think that is true on this Committee. [Laughter.]

Ms. **Liebeler**. Can I cite you, and quote you? Although I appreciate your concern.

Mr. **Pease**. I would just like to interject, to say that I have a slavish devotion to the opinions of the Chairman of this Subcommittee. Hardly ever do I disagree with him, nor would I, his reasoning is so sound.

Chairman **Gibbons**. I will pray for you. [Laughter.]

Mr. **Pease**. Well, we want to work with you. It seems to me that we are on the eve of passing a major trade bill responding to the concerns of Americans, and as I go around the country I hear almost unanimous concern about the so-called level playing field, and I tell our manufacturers that once we get a level field, they are going to have to play on that field. They are going to have to go out and compete.

But it does not make our job easier if there is any, or much legitimacy to the complaint of American companies that the playing field is not level, and that the ITC is not a reliable ally in helping to make it level.

I am sure that that would be your goal as well. So, if you will supply me with these charts, that will help us make a determination of how you are coming along.

Thank you.

Chairman **Gibbons**. Thank you. Mr. Frenzel.

Mr. **Frenzel**. Thank you, Mr. Chairman. Thank you, Madam Chairman, for coming before us.

I got the impression from the last questioner that he was inferring that nobody would come before you because you were going to get a directed verdict against them, and that somehow they all had wonderful cases.

I know of literally hundreds of companies who do not come before you because they know they do not have a good case, and they cannot prove it up, and perhaps that is what the gentleman really meant.

Mr. **Pease**. Well, if the gentleman would yield.

Mr. **Frenzel**. I yield to the distinguished gentleman from Ohio.

Mr. **Pease**. No doubt there are cases which are not sound and which are not brought for that reason, and no doubt some of the people who have come to complain to us, some of the corporations, neglect to mention that. They just mention that they have decided not to file a case.

I was directing my concern at this chart from last year, that referred to 25 cases that had been filed where the majority of the Commission found in 15 of those 25 cases, that there was injury, and the Chairman found in 1 out of 25 that there was injury.

It seems to me that either they are out of sync with the Chairman, or vice-versa, and that is what I am really trying to find out.

Mr. **Frenzel**. Well, apparently the gentleman likes slavish devotion to his own chairman better than he likes such slavish devotion on the ITC to its Chairman.

I guess I believe that there is richness is diversity, and that is why I sometimes oppose the gentleman and even our glorious chairman.

Mr. **Pease**. This is getting too heavy. [Laughter.]

Mr. **Frenzel**. Madam Chairman, I believe the ITC provides a level playing field, and I think it has done a pretty good job. I do not agree with all of its decisions, but I do not also agree with everyone who loses complaining that they have been had.

I never met a person in jail who thought he had gotten a fair rap, and I think that much of the complaint comes from losers who may lose again.

But may I ask you this. I am told that we are behind on our contribution to the Customs Cooperation Council, and I would like to have your comment on that.

Ms. **Liebeler**. I am aware of that, and I am aware that that is a very important issue to many people. The Commission does not control that contribution. If it did, the contribution would be made. The State Department does.

Mr. **Frenzel**. That is controlled by the State Department?

Ms. **Liebeler**. Yes. That is my understanding.

Mr. **Frenzel**. And do you have any idea why they are making us look like deadbeats?

Ms. **Liebeler**. I will do my best to find out.

Mr. **Frenzel**. Okay.

Ms. **Liebeler**. I do not know why.

Mr. **Frenzel**. You suggest that I direct that question to the State Department?

Ms. **Liebeler**. I would be also glad to see if I can get some information for you.

Mr. **Frenzel**. That would be very helpful.

[The following was subsequently received:]

Payment to the Customs Cooperation Council

The Department of State receives annual appropriations for payments to international organizations to which the United States belongs, including the Customs Cooperation Council. To obtain the status of payment to the Customs Cooperation Council, contact Mr. Allen L. Keys, Assistant Secretary of State for International Organization Affairs, on telephone number 647-9600.

Mr. **Frenzel**. We have suffered through that arrangement for a number of years, and we are poised on the threshold of major changes in which you are involved, and I hate to see the calendar tainted by our failure to cooperate with a group that has cooperation as its middle name.

You are doing a rule-of-origin study, I am told, within the ITC. Can you tell us why you are doing it, and what you expect to find out from the study.

Ms. **Liebeler**. I thought there might be some interest in the rule-of-origin study today, and I brought with me from our staff, Jan Summers, who is directing that study. I am going to ask her if she could give you a progress report on that study.

This is Jan Summers from the Office of Tariff Affairs.

Ms. **Summers**. I was the coauthor of the report which the Commission submitted to the Ways and Means Committee last Friday.

The investigation was instituted at the request of Chairman Rostenkowski, who asked us to examine the rules of origin that are currently in use, discuss the possibility of standardizing U.S. rules, and also to try to suggest whether there is any possibility for the development of an international origin code which could be used by the world's trading countries to determine the origin of imported goods, and that is what our study tried to do.

Mr. **Frenzel**. Is the study voluminous?

Ms. **Summers**. No. It is not. It is, I would imagine, roughly 45 to 50 pages. What we did was examine the various rules of origin, the legal criteria that are in use by the major countries of the world today, and try to evaluate the benefits and problems inherent in each of those possible rules.

In addition, in light of the Chairman's request, we tried to suggest one possibility for an alternative rule of origin, a principle which might serve as the basis for this international origin code, which could be developed over time.

Mr. **Frenzel**. Thank you very much.

Madam Chairman, is that a public document, or is that in the hands of the Chairman alone?

Ms. **Summers**. As of yesterday, I was asked by a representative of the committee to go ahead and have the study published and made available to the public.

Mr. **Frenzel**. Good. As one member of the public, I would love to see it whenever you get through with the press and other important people.

Ms. **Liebeler**. How about this afternoon?

Ms. **Summers**. I have a copy of it with me.

Mr. **Frenzel**. Don't hurry it for me.

Ms. **Liebeler**. We have a copy with us.

Mr. **Frenzel**. You have not heard my questions on your budget.

Ms. **Liebeler**. Well, all right. We will discuss this one later.

Mr. **Frenzel**. I do notice there is a slight increase in your budget submission, notwithstanding the fact that you had $4 million for a relocation expense last year, and that is inevitable, you feel, to do the job of the Commission?

Ms. **Liebeler**. Mr. Frenzel, we are moving to a building where the additional cost of rent is $3.453 million, a big part of that increase is increased rent, and that is really nondiscretionary at this point.

Mr. **Frenzel**. You envision the exact same number of employees in the coming fiscal year?

Ms. **Liebeler**. We have asked for 502, yes, sir.

Mr. **Frenzel**. That is your authorized amount now?

Ms. **Liebeler**. Yes.

Mr. **Frenzel**. Do you mind telling me how many you have on board now.

Ms. **Liebeler**. On board? That is a number that changes every day.

Mr. **Frenzel**. Your average in the first quarter——

Ms. **Liebeler**. No, I can do better than that. I am going to tell you what we have now—I asked the question yesterday, and yesterday it was 457, and an additional two with entry dates. Today, it is 458.

Mr. **Frenzel**. Okay. So your budget supposes a 10 percent increase in personnel?

Ms. **Liebeler**. We are authorized in fiscal year 1987 at 502.

Mr. **Frenzel**. Yes, but you are not using 502.

Ms. **Liebeler**. We just got——

Mr. **Frenzel**. You anticipate moving from wherever you are now, up 10 percent in fiscal year 1988.

Ms. **Liebeler**. We anticipate 502. The Commission had asked for 482 and got 482 and in the continuing resolution we were given 502. We got an additional 20 in the 1987 continuing resolution.

It was not until February of this year that the Commission, after considerable consultation agreed how those slots should be allocated. The slots have been allocated and hiring has begun, so it is not surprising that we have not filled those 20 slots.

Mr. **Frenzel**. Okay. So the 40 to 50 employees which you intend to use in 1988, but which you have not hired yet, are necessary to take care of the anticipated workload?

Ms. **Liebeler**. The Commission feels that 502 are necessary and it unanimously approved that number.

Mr. **Frenzel**. Okay. And the Commission will assure the Committee, that if it approves this increase, that if you do not need quite so many, you will not feel a compulsion to hire them all?

Ms. **Liebeler**. I can assure you that I will not feel compelled to hire them all, and I will not compel my managers to hire them all.

I cannot believe that the committee would want to hire surplus personnel.

Mr. **Frenzel**. It may be a little hard for you to control from the bench, but I hope your successors are able to.

Madam Chairman, I thank you for your testimony. I yield my time.

Chairman **Gibbons**. Mr. Crane.

Mr. **Crane**. I want to apologize, Madam Chairman, for not being here for your testimony, but appreciate your presence.

In connection with the number of employees you have, how many did you have in 1982?

Ms. **Liebeler**. In 1982. One moment sir, my staff is getting it. How far back do you go with the table? While we are looking for 1982, maybe we could give you—what is 1985? No, the charts we have with us today may not go back to 1982.

I think we are going to have to either wait a couple minutes, or supply it for the record, as you choose. In 1982 we were authorized at 438, and at the end of the fiscal year we had filled 413.

Mr. **Crane**. 413. And you had 292 investigations initiated that year, right?

Ms. **Liebeler**. I do not have the 1982 figures in front of me, but——

Mr. **Crane**. Well, I am just reading from your testimony here. The reason I ask is that——

Ms. **Liebeler**. Ninety-two of them were a block of steel cases.

Mr. **Crane**. Ninety-two were——

Ms. **Liebeler**. If you remember, there was a whole block of steel products that came in that caused what we call the "steel blip".

Mr. **Crane**. But the only reason I am curious is, you indicate in your testimony that that was twice what you had had in the previous year, and then the caseload drops down to 239, 214, projected, 244, for fiscal year 1987, and you indicate that the way things are going right now, that figure may be high.

I was wondering why the authorization for the increase from 413 to 502 with the caseload dropping?

Ms. **Liebeler**. The caseload is down right now, down both from our own projections, and down from 1986, but we, before that, had had a rather precipitous increase.

I think that it would be premature at this point to look at this several months worth of fiscal year 1987 numbers, and assume that the drop off is indicative of a permanent trend. I think it is too soon to tell.

It may be that there are domestic industries who, because of the dropping dollar, and increased orders for delivery in future quarters, are in fact doing better than the trade statistics would suggest.

On the other hand, it may well be that there are businesses waiting to see what Congress is going to do with trade legislation before they file their cases.

I think we cannot tell yet what our drop means, and it is only a drop from our projections and from 1986. It may just be that we are levelling off.

Mr. **Crane**. But taking the 92 steel cases which produced that significant increase in 1982, were the steel cases easier to handle en bloc that way?

Ms. **Liebeler**. They were lumped, I believe, into ten investigations. We have attempted to look at our caseload a variety of ways: by the number of petitions filed, by a product line analysis. Ordinarily, no matter which way you count them, there is not a difference in trends. The trends seem to be parallel. So it is not just how you count the cases.

Mr. **Crane**. Well, the only reason I ask that is, I gathered that there are complexities in individual cases that vary, probably, considerably, but it is still a little puzzling how, in 1982, with 100 fewer employees, that you handled substantially more cases than in subsequent years. Was it a workload that you were incapable of dealing with in 1982?

Ms. **Liebeler**. Mr. Crane, I was not at the Commission at that time. I can tell you, however, there was a point where our staff was working night, days, and weekends, and stretched very tightly. That kind of a condition could not go on very long before you would see mammoth withdrawal from the agency.

Some of the increase in positions that Congress gave the Commission was a result of a situation like that. Mr. Arnold would also like to answer your question.

Mr. CRANE. Sure thing.

Mr. ARNOLD. What happened going from 1981 to 1982, our caseload doubled, and has stayed at those higher levels since then.

When we went from 1981 into 1982, we had the staff levels that were associated with a much lower workload for our previous history. As a result of what happened in 1982, and the caseload stayed up in terms of the actual number of investigations we performed.

In 1984 Congress responded to that and increased our staff level to 482, to take care of what the Chairman just described to you.

We had people who, according to our managers talking to me, were not able to take vacations, who worked regularly 6 and 7 days a week. The staff level in 1982 reflected an investigation level that was half, or two-thirds of what we were at that time performing.

So, really, the 482 staff level that we went up to, and stayed at until this spring, when the Congress provided another 20 positions——

Mr. CRANE. I see.

Mr. ARNOLD [continuing.] Reflects the work level that we have had since 1982 until present.

Mr. CRANE. And you feel, then that the current staff level is sufficient to handle the workload that you have without going to 6-7 day weeks?

Ms. LIEBELER. Yes.

Mr. CRANE. Incidentally, when you have that kind of a situation, are you authorized to pay overtime?

Ms. LIEBELER. Yes, but there are certain professional staff that cannot normally get overtime. The lawyers, the accountants, the economists, ordinarily do not get overtime. We give them something called compensatory time, but sometimes you cannot ever catch up with that.

Mr. CRANE. But you do feel, then, that the current staff level is adequate to handle this kind of a caseload that you are projecting?

Ms. LIEBELER. The Commission is unanimous in agreeing that the 502 positions are adequate. Now, should there be unanticipated changes, we might have to change our mind about that.

Mr. CRANE. You indicate in 1982, that was almost a doubling, going to 292. In 1981, what was it, in the neighborhood of 150?

Ms. LIEBELER. Again I was not on the Commission at that time, but there was significant trade legislation in 1979 which has to be responsible for a significant part of that.

Mr. CRANE. Well, considering the trade bill that just went through on the House side, at least, what impact would you anticipate that might have on your caseload, looking to the future?

Ms. LIEBELER. That is a hard one because we have to know exactly what it is going to look like when it comes out of conference, and I would be willing to take bets on that. You know, there are some very interesting questions yet to be resolved.

There are areas where it is very hard to tell whether our caseload is going to go up or down. We have some intellectual property jurisdiction under section 337 and that statute is being toughened to make it easier to protect intellectual property rights.

We may get many more cases because a lot of the tougher issues will no longer be addressed. These cases may be easier and cheaper to litigate, as a result. On the other hand, the new law may have a deterrent effect and fewer cases may be filed.

People will either not infringe domestic patents and copyrights, and trademarks, or, if they do, they will settle faster because of the tougher law.

It is hard to know exactly how the proposed new legislation will affect our case law.

Mr. **Crane**. Thank you, Madam Chairman. I appreciate your testimony.

Chairman **Gibbons**. Mr. Downey.

Mr. **Downey**. No questions, Mr. Chairman.

Chairman **Gibbons**. Mr. Guarini.

Mr. **Guarini**. I just have one question, if I may.

You mentioned something about the rent, and I know GSA negotiates your rent, but can you tell me, in this new building—just out of curiosity—how much a square foot the Government is paying a private contractor, or a private developer?

Mr. **Arnold**. In our new building?

Mr. **Guarini**. Yes.

Mr. **Arnold**. The actual rent that GSA will be paying to the developer in Southwest Washington is $23.65 per square foot for this particular building.

We actually pay GSA a bit more than that for the overhead for certain management functions they perform, and certain utilities that——

Mr. **Guarini**. Well, what does your gross rent come to, then?

Mr. **Arnold**. For 1988, we anticipate our rent will be $5.6 million.

Mr. **Guarini**. For how many square feet?

Mr. **Arnold**. 175,000.

Mr. **Guarini**. So you are paying 30 some odd dollars a square foot for rent?

Mr. **Arnold**. It comes out to about $28.83, yes.

Mr. **Guarini**. Just as a personal note, that is one hell of a lot of money. All right. Thank you.

Chairman **Gibbons**. Maybe you better move down to my district. It would surely be a lot cheaper.

Mr. **Guarini**. A hell of a lot cheaper. I will invite you to New Jersey. You will save a lot of money. [Laughter.]

Chairman **Gibbons**. All right. Well, thank you very much.

Mr. **Guarini**. With all the toxic waste dumps. [Laughter.]

I take that back. It is the Garden State of New Jersey.

Chairman **Gibbons**. Their health insurance will go up. [Laughter.]

Thank you very much. We appreciate your testimony. That is all the questions we have. Thank you very much. We hope that you will find your new quarters a lot more comfortable and easier to work in.

How do you do, Mr. Ambassador? Glad to see you.

Our next witness is the Honorable Michael B. Smith, Deputy U.S. Trade Representative. He is so slim, we hardly recognize him now. You look good, Mr. Smith.

STATEMENT OF HON. MICHAEL B. SMITH, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY ALAN HOLMER, GENERAL COUNSEL, AND MICHAEL DOYLE, ASSISTANT U.S. TRADE REPRESENTATIVE FOR ADMINISTRATION

Mr. SMITH. Thank you. It is the haircut. I am trying to emulate my son.

Chairman GIBBONS. You are lucky to have that much hair. Mr. Ambassador, go right ahead.

Mr. SMITH. Thank you, Mr. Chairman. I am accompanied today by Alan Holmer, on my left, General Counsel of USTR, and, on my right by Michael Doyle, the Assistant U.S. Trade Representative for Administration.

I am pleased to be here this morning to testify before you. I am a last minute substitute for Ambassador Woods. He is in Paris, where I was supposed to be, and I am here, where he was supposed to be. But Ambassador Woods is in Paris, accompanying Ambassador Yeutter during the OECD ministerial, and as you know, the agricultural issue is very important before the OECD this year.

I am a last minute substitute, and I do not pretend to be an expert in budgetary matters. My wife keeps telling me that when she looks at the checkbook. Nonetheless, sir, I will try to get down to the meat of the matter.

I have submitted a formal statement to you, and I just have some informal remarks, summarizing that, if I may present them now.

Our budget authorization request is for $15,141,000, which is $107,000 lower due to the GSA building rent limitations than had been approved by the Senate, and the authorization calls for 146 positions in fiscal year 1988 to reflect the work that we will need to undertake in the following areas.

To carry out the President's program for opening foreign markets, to enforce the trade laws of the United States, and to develop the kind of forward-looking trade policies that will ensure our competitiveness into the 21st century.

At the same time, I believe that our request is a lean request. The new moneys and staff that we require reflect the needs that we anticipated before this subcommittee last year, namely, the resources for the Uruguay round.

Our budget also deals, realistically, with a cost that we are now incurring as a function of the Federal Employment Retirement System, the recent Federal pay raise, a significant rent increase, and cost adjustments in Geneva which have arisen as the dollar has declined against the Swiss franc.

The supplemental budget request for fiscal year 1987, which we have submitted along with our 1988 budget authorization request, reflects the fiscal 1987 cost of these changes.

For fiscal year 1988, and with respect to the fiscal year 1987 supplemental, we are requesting no-year funds. No-year funding will allow us to manage our resources rationally, when exchange rate changes—whether up, or down—force us to deal with changes in the cost of our Geneva operations.

OMB has agreed to consider favorably a supplemental in fiscal year 1988 to cover actual exchange rate losses this year.

With some modesty, I think it is safe to say, or I believe, anyway, that USTR is an organization which has traditionally provided the U.S. taxpayer with a high payoff. I think this was shown in fiscal year 1986, and thus far in fiscal year 1987.

In fiscal year 1988, we will be heavily involved in the most complex phase of the Uruguay round negotiations. In addition, we anticipate we will continue to carry a heavy bilateral negotiation workload that will focus on opening markets and address unfair trade practices.

USTR, as you know, sir, is a small organization. It is well suited, I believe, to carry out the full range of work in which we are now engaged.

We have what we call a centers-of-excellence concept to ensure that all the trade matters we handle are handled well. Our bilateral offices play a leading role identifying the need for and conducting trade negotiations that are best carried out on a one-to-one basis, and our sectorial offices for industry and services, agriculture and textiles, play a point role on issues that involve products and services we trade with many nations.

In the Uruguay round we have established teams. These teams match the negotiating structure in the GATT and serve as our primary mechanism for developing and coordinating U.S. negotiating positions on all of the new round issues.

No office, or team in USTR stands alone. Every one of our activities is closely linked to the agencies on whom we are the most heavily dependent, to wit, Commerce, Agriculture, State, Treasury and Labor, and the U.S. business community through our private-sector advisory committee system, and the Congress through our congressional advisers for the Uruguay round and through our congressional consultation process.

In addition to being well organized to handle our current and projected workload, USTR is thinking about the future, particularly the future of its staff.

We have, for example, established a new SES candidate development program that I hope will give our young staff the foundation they need to move into the management ranks.

We have also begun to set up a formal program that will eventually allow us to exchange staff on a regular basis for limited periods of time with the Departments of State, Commerce, and possibly the ITC.

We are proud of both the work that we do, and the people that we have, and there is much to be done. Clearly, the rest of this year and 1988 promise to be extremely taxing, but we are optimistic about the future.

Sir, that concludes my testimony. Mr. Holmer, Mr. Doyle and I would be glad to answer any questions that you might have. Thank you, sir.

[The prepared statement follows:]

TESTIMONY OF
AMBASSADOR MICHAEL B. SMITH
DEPUTY UNITED STATES TRADE REPRESENTATIVE
BEFORE THE
SUBCOMMITTEE ON TRADE
HOUSE COMMITTEE ON WAYS AND MEANS
MAY 12, 1987

Mr. Chairman, I am pleased to appear before you to present the Fiscal Year 1988 budget authorization request of the Office of the United States Trade Representative (USTR).

The budget authorization request we have submitted to you has two dominant characteristics. First it accurately reflects the steps we must take in Fiscal Year 88 to improve America's international trade position. As such it requires the resources we will require to:

- Aggressively implement the President's on-going program for opening foreign markets;
- Actively enforce the trade laws of the United States, and
- Develop, in concert with other agencies of the U.S. government, the kinds of trade policies and action programs that will ensure America's competitiveness into the 21st century.

Second, our budget is lean. It reflects not only the spirit of the Gramm-Rudman-Hollings legislation, but also our tight, no-nonsense operating style.

USTR 's original submission requested $15,248,000 for FY 1988. We have reduced that amount by $107,000 to reflect a lower than originally estimated rent bill from GSA. This revised amount is $9,000 smaller than the earlier reduction we gave the committee staff. USTR now requires a core budget of $15,141,000, and a staff level of 146 positions. The recurring portion of this request involves $14,841,000 and 146 positions. The difference, $300,000, addresses a one time expenditure.

The recurring portion of the USTR budget request for FY 88 is higher than our FY 87 base of $13,300,000 and 136 positions by $1,541,000 and 10 positions. The increases requested in USTR's resources reflect two important changes:

- Externally driven changes in our basic operating costs, and
- The initiation of Uruguay Round of multilateral trade negotiations the General Agreement on Tariffs and Trade (GATT).

In FY 88, USTR's basic operating costs will rise by $1,291,000 reflecting three new costs: a non-discretionary rent increase of $617,000; USTR's participation, at the level of $469,000, in the new Federal Employees Retirement System (FERS), and the 1988 cost of the three percent pay raise of this year, which will cost us $205,000.

In addition to these increases in our basic operating costs, we are beginning, even now, to incur expenses in connection with the new Uruguay Round of GATT negotiations. By FY 88, we will be engaged in the most complex and time consuming phase of these negotiations.

This past January, decisions were taken in the GATT which set the structure for the Uruguay Round of negotiations. The structure is a complex and demanding one, with its fifteen topical negotiating groups. In order to operate effectively, from the start, we need to ensure that appropriate resources are available to our negotiators.

In order to meet this challenge, ten new staff positions will be required. Five of the new staff positions will be dedicated to substantive and managerial requirements of the negotiating round. The cost of these five new positions will be $240,000. The other five staff positions will allow us to shift a critical number of contract functions and functions that have been performed by reimbursable details into our core staff. This shift will increase the stability of USTR's operations and ensure continuity over the multi-year negotiations upon which we have embarked. On a recurring basis, we are also requesting an additional $10,000 in representation funds to support expanded representation requirements which stem from participation in the new negotiating round.

On a one time basis, we are requesting $300,000 to upgrade our computer capacity, bringing it to the level required to meet the demands of the Uruguay Round. Improved security as well as additional analytic capacity will result from this expenditure.

In addition, we are requesting an FY 87 supplemental to cover one half of the cost of the recent federal pay raise, $77,000, and all of the proposed 1987 costs associated with the introduction of FERS, $168,000. We would also like five positions, without funds, to move ahead this year with our plans for shifting key support functions to an "in-house" basis. As you know, the House approved recently an FY 1987 supplemental which includes our funds request.

Over the past two years, significant changes in the value of the dollar against the Swiss franc, have created difficulties for USTR, which has permanent operations in Geneva as well as Washington. To facilitate sound operations in the future, we are requesting that our total FY 88 request and our FY 87 supplemental funds be provided to us on a "no-year" basis. In particular, "no-year" funding will allow USTR to retain dollars in years in which the

U.S. currency appreciates versus the Swiss franc, and spend them when a depreciation puts us in a shortfall position relative to our basic costs. We estimate that one million dollars of no-year authority would be sufficient. OMB has agreed to consider favorably an FY 1988 supplemental request in the FY 89 budget cycle to cover our exchange losses.

The Senate has already approved a one-year authorization bill for USTR. It authorizes in FY 1988 $15,248,000, which reflected the earlier rent estimate, and one million dollars of no-year spending authority.

The budget authorization request we have submitted includes only those minimum costs we must incur to fulfill the role Congress intends for USTR. In FY 88, as in each of the past few years, the USTR's work load will be multifaceted and heavy indeed. To illustrate this point, I would like to outline for you some of the highlights of the past year, as well as some of our expectations about the work in which we will be engaged during the next two fiscal years.

Over the past twenty months, we have made important progress in opening new markets for American products and services -- and in one important situation involving the European Community (EC) -- we fought hard and held on to markets that we might have otherwise lost.

To bring down the foreign trade barriers that impede U.S. exporters, this Administration has literally shifted gears. The shift is clearest when one looks at the way we are using Section 301 of the U.S. trade law -- the primary legal tool we have for attacking unfair trade practices. Until 1985, only industry had put this law to work. Now the full force of the U.S. government is in operating gear with respect to this law.

Since September, 1985, we have "self-initiated" eight Section 301 actions. Of these, we have brought seven cases to resolution. We expect to resolve the eighth case within the next few months. In addition, we brought four existing industry-initiated cases to resolution during the same period. Overall, this Administration has launched more than 60% of all the actions taken under Section 301 since that provision of our trade law was enacted.

Measured against any yardstick, these results are impressive -- not just in terms of the market access they represent, but because 301 cases are only one of the many kinds of trade policy and trade action efforts USTR undertakes each year.

Major bilateral and multilateral trade negotiations are a key way in which we seek to expand the international trade opportunities available to U.S. businesses. Central to our efforts are:

- Our "free trade" talks with Canada -- America's largest trading partner, and
- The new multilateral trade negotiations under the GATT which we launched last September in Punta del Este, Uruguay.

The "free trade" talks with Canada represent what may be our single most important endeavor for 1987. Merchandise trade flows between our two countries totalled $114 billion in 1986. We believe that these numbers will grow dramatically if we open up the border between our two nations. We also see a vast expansion of activity in the services sector, in investment flows, and in capital movements generally. These negotiations are complex and sensitive. Nevertheless, we hope to bring them to completion this year.

If we are successful in our "free trade" talks with Canada -- and we certainly will try to be -- implementation will require a good deal of attention in FY 88.

Last September, in Punta del Este, Uruguay, more than ninety nations joined together to launch a new round of multilateral trade negotiations in the GATT. The United States played a key role in this effort. First, we worked behind the scenes for several years to create a favorable climate for the initiation of new multilateral talks. Second, we made the case, throughout FY 86, for a comprehensive negotiating agenda. Our success in placing all of the issues that concern U.S. business on the negotiating agenda is as important as it was hard won.

The Uruguay Round will demand a significant level of attention from USTR during the remainder of FY 87, in FY 88 and for two years thereafter -- assuming that the negotiators can complete their work within the four year negotiating period which the participating nations agreed upon in Uruguay. Through this GATT negotiating round, we are seeking important improvements that will be of great benefit to U.S. businesses. Our objectives include:

- The creation of international trade disciplines for agriculture -- disciplines that are essential if governments are ever to let market mechanisms and open trading rules restore the economic health of the agricultural sector;

- The creation of international trading rules covering services -- the fastest growing sector of the American economy;
- The development of international agreements which will afford U.S. intellectual property the kind of protection it deserves;
- The creation of international disciplines covering investments, and
- Strengthening the GATT dispute settlement process -- the glue that must hold the system of international trading rules together.

In addition to initiating these important bilateral and multilateral trade talks last year, we took a number of other steps to correct unfair trade practices and open foreign markets for U.S. business. For example, the Administration:

- Took the first self-initiated action under Section 307 of the Trade and Tariff Act of 1984. As a result of this action, Taiwan agreed to eliminate export performance requirements in its automotive sector.
- For the first time, used Section 305 to self-initiate investigations of Japan's supercomputer trade practices and the EC's meat inspection practices -- both of which could have negative effects on U.S. trade.
- Conducted extensive bilateral negotiations with Canada concerning softwood lumber. As a result, Canada is imposing an export charge to neutralize the effects of the subsidies it provides to this industry.
- Completed negotiations on ten bilateral investment treaties (BITs), and forwarded them to the Senate for its advice and consent.

The actions we take to enhance the opportunities for U.S. business are not focused exclusively on foreign markets. At times, what is needed is action that gives U.S. business a solid competitive chance in our own large market. Over the past year, we've acted forcefully in this arena as well. We have:

- Successfully negotiated a renewal of the Multifiber Agreement (MFA) with expanded fiber coverage to prevent disruptive import growth in previously uncontrolled fibers, such as ramie, linen and silk-blends. In bilateral negotiations we held annual growth in trade to less than 1 percent with four of our largest suppliers-- Taiwan, Korea, Hong Kong and Japan. We also negotiated much tighter agreements with several mid-level suppliers. In all, we established nearly 200 new quotas.

o Used Section 201 of the trade law to take actions that will provide red cedar shakes and shingles manufacturers with the import relief they require while they restructure in order to successfully compete in the future.

We have also taken forceful actions to protect our position in third country markets -- as we did when we retaliated against the Japanese for their failure to implement the provisions of the semiconductor agreement with respect to dumping in third country markets.

Yet our work is still far from complete.

At $169 billion, our trade deficit remains far too high. Trade policy and the kinds of trade actions I have just described are important elements of a solution -- but they cannot carry us the whole way.

The need for a more comprehensive approach for addressing the issues that determine the international trade position of the United States, as well as the domestic competitiveness of U.S. business, is what led President Reagan to call upon his Cabinet to formulate a program that would ensure our competitiveness not just for today -- but for the next decade and the next century as well.

The Trade, Employment, and Productivity Act of 1987, which President Reagan spoke of in his State of the Union Address, and which he delivered to Congress in February, was the product of a wide-ranging effort to define the challenges that face America and to develop the means for meeting those challenges. The titles of the Act are as far ranging as its purposes.

The intent of the Trade, Employment, and Productivity Act of 1987 was to put the U.S. government shoulder to shoulder with U.S. business and with American workers and farmers in an all out effort to guarantee a bright future for this nation.

As the foregoing suggests, in FY 88, as in the past, USTR must continue to be both a proactive and a responsive organization. Through well planned bilateral and multilateral negotiations, we will continue to seek systematic improvements in the international trade environment that benefit U.S. business and improve America's trade picture. At the same time, we must be prepared to respond immediately when new trade barriers are erected and new unfair trading practices are uncovered.

USTR, as an organization, is well prepared to act in these two dynamic modes. Our organizational structure is sound, and it is flexible enough to handle the parallel demands of the Uruguay round of multilateral negotiations, continuing bilateral negotiations and a full complement of unfair trade practice cases under Section 301 and other sections of our trade laws.

Our ability to operate simultaneously, and effectively, in all of these arenas is a function of:

- Multiple "centers of excellence" within our small organization, and

- The strong ties between USTR and those U.S. government agencies that most clearly complement and supplement our basic capacity: the Departments of Commerce, Agriculture, State, Treasury and Labor.

As the phrase "centers of excellence" implies, USTR has identified and developed specialized skill clusters to which important tasks can be entrusted. The "centers of excellence" concept is at work in USTR:

- Our bilateral offices play an essential role in identifying the need for and carrying out those negotiations which are best pursued on a one-to-one basis.

- Our General Counsel's office plays a similar role with respect to trade law actions, particularly the extremely labor intensive cases taken under Section 301.

- Our sectoral offices for industry and services, agriculture, and textiles act as our primary link to U.S. business and, when multi-country negotiations are required to address trade problems, these centers of topical expertise operate as USTR's front line.

- In its dealings with special access to the U.S. market, our GSP (Generalized System of Preferences) office also operates as a center of excellence for USTR;

- Our GATT Office in Washington works as liaison and prepares instructions for USTR Geneva. It also has an important role in the Uruguay Round negotiations.

- The "team" approach we are using to manage our preparations for the many negotiating topics in the Uruguay Round of multilateral negotiations is the final example of the

> way in which this concept has been put to work in USTR. The "team" approach we are using for the Uruguay Round is similar to that which USTR has traditionally used to deal with sectoral and functional negotiations.

The "team" approach to the Uruguay Round of GATT talks perhaps best illustrates the value of the "centers of excellence" concept. Negotiations in the Uruguay Round will be carried out by fifteen negotiating groups, each of which is responsible for one or a cluster of topics. To prepare for these negotiations, USTR has created comparable interagency teams. The "lead" individual on each of these teams -- the individual who is responsible for ensuring that all of the preparatory work is completed -- is a USTR staff member.

The other members of these teams are drawn from any and all U.S. government agencies whose experience and skills are relevant. The Department of Commerce, for example, is well represented on most of our topical "teams".

What we are doing, in effect, is breaking out of conventional molds to bring together the best the U.S. has to offer in each area where we will be seeking important gains from these multilateral negotiations.

In addition to effectively deploying the human resources we have on board -- and stretching our capacity -- by bringing skilled personnel from other agencies onto our "teams", USTR is actively planning for its own future.

Ours is a relatively young, highly skilled and highly mobile staff. While USTR's staff turnover is low by comparison to other organizations, a portion of our staff does move on each year to responsible positions in the private sector, or to new responsibilities in other agencies.

To the extent possible, we seek candidates to replace them from our on-board staff. Through this process, we are building up the cadre of personnel from which we will, in future years, select new Assistant USTR's to direct our operations and new negotiators to represent us in important trade talks.

To foster the internal development program we favor, we have put into place a number of supporting activities:

- o We have established a new SES candidate development program through which we will train a pool of GS-15s in the skills they will require if they are to manage important USTR offices;

- We have also put into place a long term program with the Department of State, through which they will send us personnel on detail, and through which we hope to offer our staff the opportunity to work, for a period of time, in another agency;

- Finally, we continue to take advantage of internal opportunities to rotate our staff among our bilateral, multilateral and sectoral units -- thus giving them broad exposure to the full range of work in which we are engaged.

While USTR's staff remains the best measure of the organization's caliber, our systems are not being overlooked. The improvements we have made in USTR's planning and budgeting process, in particular, have increased our ability to operate quickly and effectively.

For example, we recently took advantage of the Gramm-Rudman-Hollings legislation to introduce zero-based programmatic budgeting at USTR. This change is reflected in our FY 88 budget. Over this past year, we have also created tools to help our senior managers set priorities for their areas of responsibility. This effort has resulted in better, decentralized resource decisions.

Mr. Chairman, USTR is better prepared than ever to meet the challenges that an increasingly complex global economy poses for our nation. The work in which we will be engaged in FY 88 will, in all likelihood, be more demanding than the work we concluded in FY 86, or the work in which we are engaged today.

Our responsibilities are many, but our demands in budget terms have always been tight. We pride ourselves on being a taxpayer investment with a very high payoff. Thus, while we are requesting some increased resources for FY 87 and FY 88, these requests are assuredly moderate. We are mindful of the disastrous impact our federal budget deficit is having on our economy and on our international trade position. Were it possible for us to request fewer resources, we would do so.

Mr. Chairman before concluding I would like to comment on one other matter in the authorization bill which is the subject of today's hearings. That is the customs users fee, contained in Section 4 of S. 829. We believe that it is consistent with our GATT obligations to change a user fee for customs services. We urge, though, that the funds generated by the customs users fee be earmarked to pay the cost of services rendered to importers by the U.S. Customs Service. This will aid recognition of the fee's GATT consistency.

Mr. Chairman, I would be pleased to respond to any questions you might have.

Chairman **Gibbons**. Well, I am going to guess that—hopefully—that we will have a trade bill on the President's desk by the time we take the August recess, and that it will be in such a form that he can sign it.

If that happens, are you going to have enough staff to carry on this negotiation? This is a huge negotiation that we have envisioned for you. Are you going to have enough staff to carry on the negotiation if we pass that trade bill by the end of August?

Mr. **Smith**. Well, with regard to the new, or additional negotiating demands that will be called for in terms of the Uruguay round, we do believe that with the small increase that we have asked for the USTR staff, and for the staff increases that I believe have already been approved, as requested by the Department of Commerce, and by the system of reliance on the interagency process, I do believe, sir, that we will have enough staff to carry out this additional negotiating responsibility.

With regard to whether or not the trade legislation, when it is passed, what sort of additional demands that will put on us, my answer is much like the Chairman from the ITC. It would depend on what is actually in the legislation, and what demands it makes for us.

We can already see, just by taking an earlier version of the Senate bill, for example, that it would be both additions to the workload and reductions in the workload. So it is too early to call, but putting that aside, if I may, Mr. Chairman, I would think that with the personnel that we have on hand, and the ones that we have requested, we believe that we will have enough people to carry out the work.

Chairman **Gibbons**. Mr. Schulze.

Mr. **Schulze**. Thank you, Mr. Chairman.

I would like to thank you gentlemen for appearing, and for your testimony, and commend you on the job that you have been doing. Your area has been growing, again by leaps and bounds, and under difficult circumstances. I do have one question.

Tell me about overseas staff; how many people are there, and where are they.

Mr. **Smith**. Overseas staff of USTR? The precise number? Mr. Doyle, would you tell him the precise number.

Mr. **Doyle**. We have 23 people in Geneva, all in Geneva. They represent a mix of our own staff, and other staff that are detailed to us from other agencies. It also includes contractors.

Mr. **Schulze**. That did not increase because of the current talks?

Mr. **Doyle**. No, that has not changed much yet. We would contemplate adding one or two more if we get the request approved that we have before the committee now.

Mr. **Smith**. Mr. Schulze, when I opened the office in Geneva in 1979, we had about 16 or 17 people. We have added three or four permanent, or full-time people due to the negotiations of the harmonized system, which I think brings us up to about the 23. We also have——

Mr. **Schulze**. Isn't that about completed?

Mr. **Smith**. We hope it is about completed, and that we will get this, not only to the Hill, but that the Congress itself will pass it this year.

We also have one person on detail to the U.S. mission in Brussels, that is, a USTR person, and that is the only person outside of Geneva and Washington.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. FRENZEL. Would you yield.

Mr. SCHULZE. Sure.

Mr. FRENZEL. What does that person in Brussels do?

Mr. SMITH. Well, the State Department sometimes thinks he does nothing but USTR work. Actually, the first person we had in there was a deal that I worked with Ben Reed and the Department of State in 1979. We had Tim Bennett over there to follow, in essence, the GATT, and bilateral trade matters which would normally be the areas of concern for USTR, either statutorily, or otherwise, before the European Commission, on a day-to-day basis making contact with, in essence, DG1, the Director-General No. 1, which deals with the external relations; that is, with the United States. Not DG6 which is the agricultural side. There are agricultural people from USDA in the attache system there.

Mr. Bennett was there for 4½ years. Now, Mr. Orr from our staff is there. But essentially, Mr. Frenzel, that person does, if you will, the "meat and potatoes" of day-to-day trade work, interfacing with the Commission in Brussels.

The relationship has been excellent and the cooperation with the Department of State has been superb.

Mr. FRENZEL. If the gentleman would yield again, and I would ask the gentleman a question. I do not think there is any doubt but that they are doing fine work. My query I guess is that we have a person in Brussels, but we do not have one in Tokyo or Brasilia, or anywhere else.

Is the volume sufficiently different?

Mr. SMITH. No, sir. At one time, it was contemplated that we would have a person in Tokyo, and then, as a second echelon, a second grouping, perhaps Ottawa, Mexico City, and Brasilia.

The second stage never got put into effect because of budgetary reasons, and other things like that. With regard to Tokyo, we have played an active role with the Department of State in the assignment of the people who went to Tokyo.

You will recall that Mr. Barraclough, for example, was the economic minister there. He had a long experience in the Tokyo round. Bill Piez, the same thing, when he was the economic minister there. Mike Ely, who is now the economic minister there. And their staff people, like Chuck Angevine, who has had a long involvement with USTR through his experience in the textile program.

Ira Wolff, who is now on Senator Rockefeller's staff, and others. We have felt, that through the assignment of the normal FSOs, who have had a long contact and relationship with USTR, that we could cover that problem without the assignment of a USTR person per se.

Mr. FRENZEL. Thank you, Mr. Chairman. I thank the gentleman for yielding.

Mr. SCHULZE. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. You have done a remarkable job of stretching your personnel with all the work that is being done, and I want to congratulate you in regard to what is happening with Canada, which I understand we are on the verge of a remarkable announcement, hopefully, very shortly.

I do not know how you can do it. In the first place, we are doing more bilateral trade treaties with all the Caribbean nations where there were 27 of them, more than ever. Not only do you have GATT to contend with, but we are really going in a bilateral negotiation way, and at the same time being on a separate track, going multilateral. And I should imagine the demands on your staff are more than ever, if you are to keep current with what is happening in the world today.

When I look at the currency swing, exchange rates have gone down over the mark and Swiss franc 30, 40, 50 percent, depending upon what you are talking about, in the last year or two. How you can come up with the same kind of budget and do all that work confounds me somewhat.

Could you comment on that?

Mr. SMITH. Well, first, I hope, sir, that your optimism on Canada does, in fact, turn out to be the case.

Mr. GUARINI. We will keep our fingers crossed.

Mr. SMITH. We will keep our fingers crossed. That, perhaps, is an interesting case of tying in perhaps to the chairman's question as well: Do we have enough personnel?

Actually, the way we have structured the Canadian talks, we have a very small office in USTR. Three people, if you will, run the Canadian talks. But that is misleading. We have about 70 people throughout the agencies of the U.S. Government whom we have created in various committees to work on various elements of the Canadian negotiations.

In my view, that is precisely the way USTR should run. We should not be a huge organization. We should be able to call upon the expertise of the other agencies and use them effectively. The fact that we are this far along in the Canadian negotiations, I think is testimony to the effectiveness thus far of the way it works.

With regard to the exchange rate problem, I would ask Mr. Doyle to supplement my comments. That is a problem. Geneva is beginning in a real way to feel the pinch. We intend to eat some of that to the extent that we can, but we also have various requests to the Congress and to the Office of Management and Budget for assistance in that area.

Would you like us to just fill that in?

Mr. GUARINI. No. I assume you are going to have to come back with a supplemental.

Mr. SMITH. Yes.

Mr. GUARINI. I see in your statement you are talking about a no-year supplemental.

Mr. SMITH. Right.

Mr. GUARINI. Which is very creative thinking.

Mr. SMITH. Right.

Mr. DOYLE. Just a point or two. We did get an increase from the Congress in our 1987 appropriation that to some extent dealt with historical currency problems that we had in 1986. But this year thus far we have seen about a 14-percent decline in the dollar against the Swiss franc. It may wind up at about 18 percent. That is a problem.

But as Ambassador Smith pointed out in his testimony, OMB will in the 1989 cycle consider a supplemental and favorably, hopefully. So we will be back up with a supplemental that would try to correct for that problem.

Mr. GUARINI. But your budget is not realistic, though. If you know now that you have got that much less money to deal with, because in terms of real dollars we all know that $15 million last year and talking about Swiss francs and other currency, is not $15 million American now. So when you ask for the same amount of money, you are not being intellectually honest.

The fact is you need more money now, and just to keep the budget down and make it look good, then come in for a supplemental later, does not really address the realities of what we are dealing with. I think it would be more frank and up front to say in the budget that this is what we need based upon the value of the dollar today.

You know, we are trying to fool ourselves to think that we are striking a budget, and then later on in the year come up with a supplementary and then you have a no-year. Can you tell us how that is going to work? You just have a slush fund that whenever the dollar fluctuates you just roar on it? Is that the idea?

Mr. DOYLE. Well, we would like to think it is not a slush fund. It would simply make available to us about a million dollars. That is what passed the Senate in authorizing language, and it is intended to allow us, when and if the dollar moves positively against the franc, to, in effect, escrow that money. We are not trying to get into complicated bookkeeping, but we were looking for a mechanism that would allow us, in effect, to insulate ourselves from future changes.

We would be very happy to report in detail to the Congress and to OMB in tracking those funds so we do not use them for anything else. But if I could add a point, just the FERS business——

Mr. GUARINI. The what? Excuse me.

Mr. DOYLE. The new Federal Employee Retirement System is itself a bit of an art at this point. There are a lot of unknowns as to what those costs will actually turn out to be, and as a practical matter no-year funding to a limited extent would allow us to try to adjust for that. So we are trying to avoid these shocks in the future.

Chairman GIBBONS. Would you help us?

Mr. DOYLE. I would be happy to come up and talk to the staff if you would like.

Chairman GIBBONS. I need talk.

Mr. DOYLE. I would be happy to do that, too.

Mr. GUARINI. Please comment on it now so at least all of us have an idea of what you are referring to.

Mr. DOYLE. I am not an expert on the Federal Employment Retirement System, but let me make a couple of points. It would essentially be the new retirement system that covers Federal employees that were hired after January 1, 1984. The dimensions of it allow employees who were hired after the start of 1984 to put money into investments which have a certain matching characteristic. That is the unknown.

We do not know how much employees who are in the system will elect to put in to the savings portion and then as the employer, we will have to match that, in some cases on a dollar-for-dollar basis up to about 3 percent, and then on a 50 percent basis up to another 2 percent, or if the employee puts in 5 percent as a whole.

Mr. GUARINI. But that is true with every Federal employee.

Mr. DOYLE. That is right.

Mr. GUARINI. Is there anything different or indigenous about the money that you pay people overseas? Is there a different tinge to that?

Mr. DOYLE. No, it does not have to do with that. But the difference is that it also allows people who are covered in the present defined benefit system, the CSRS, to elect to flip into the other system. Since we do not know how many will elect to flip, that introduces an unknown in terms of cost.

Mr. GUARINI. All right. Thank you.

Chairman GIBBONS. Thank you. We appreciate it.

Mr. Pease?

Mr. PEASE. Thank you, Mr. Chairman. Thank you, Mr. Ambassador.

I would like to begin by saying that I visited the Geneva office of the USTR over the Easter week, and while the Ambassador has described the budget of the operation of the USTR as "lean and mean," I would have to describe it as "lean and most gracious."

I had an excellent visit in Geneva. I found it to be an extremely productive week and came away highly impressed with our mission there, with the smallness of the mission and yet the amount of work that it churns out. Indeed, just for the record, I was highly impressed with the operation of the GATT as I saw it in a monthly GATT consul meeting that I was able to attend.

So I would certainly urge those members of the subcommittee who have not visited with our GATT mission in Geneva to do so. They will find it very instructive.

Let me ask a little bit about your budget. How many positions do you have filled as opposed to the number you have authorized at the moment?

Mr. DOYLE. I think the number is about 132 at the moment, Mr. Pease, on board of the 136 that we have authorized; just a few vacancies which we are recruiting against.

Mr. PEASE. Is that a normal pattern that you are pretty well up against your limit mostly?

Mr. DOYLE. We have normally been right up against it.

Mr. PEASE. Okay. Fine. As you know, H.R. 3 contains a significant shift of authority from the President to the USTR in certain unfair trade practices cases. Would you anticipate that that would have any budgetary impact?

Mr. SMITH. No, sir.

Mr. PEASE. I presume the USTR does the work anyhow, even when the President actually formally makes the determination.

Mr. SMITH. That is correct.

Mr. **Pease**. We have also in H.R. 3 an extension of negotiating authority under section 102 and the resumption of negotiating authority that expired in 1982 under section 124.

If there should be a veto of the trade bill, so we do not have a trade bill this year, you would be without authority to negotiate on nontariff barriers beginning January 3 of 1988; is that correct?

Mr. **Holmer**. The President and his staff would have, we feel, all the authority necessary under the Constitution to negotiate. The difficulty would be if there was an agreement for us to be able to bring it back to the Congress to be considered on a fast-track basis. That is the authority that would expire on January 3, 1988.

It would, we think, probably send a negative signal to our trading partners if there were not to be an extension of that authority prior to January 3, 1988.

Mr. **Pease**. In actual fact, then, the negotiations going on in the Uruguay round are not likely to come to fruition early in 1988.

Mr. **Smith**. No.

Mr. **Pease**. And, therefore, if this authority lapsed, it would not be a critical matter for you. Is that correct?

Mr. **Smith**. No. What is happening in Geneva now, Mr. Pease, is there have been two cycles. They are in their second cycle of meetings on the 14 or 15 negotiating groups. The first series, the first cycle, was largely procedural. The second is the beginning of the framing of parameters and goals and objectives. The third cycle, if there is one before the summer break, or presumably there would be ones after the summer break, would begin to get down into, if you will, substance. Actual negotiations with the completion of agreements brought home, if you will, by January 1988 as opposed to January 1989 is not likely.

Mr. **Pease**. Okay. Finally, this does not exactly apply to budgetary considerations, but as you know, Congress is very eager that this new GATT round be completed on time. I am sure you share that goal.

At this point, what is your assessment? Do we have a good shot at that or not?

Mr. **Smith**. As a typical Mike Smith, I will give you both a yes and a no, or a maybe both ways. I think there is a reasonable prospect that we can bring home some elements of agreements, maybe complete agreements on particular groups, in what we call early harvest: sometime in late 1988 or early 1989 on some of the 14 or 15 groups. Others, I think, will have to go their full term, particularly the more complicated ones or the ones in which not too much is quite known now as to where it will go. I am thinking particularly of trade-related investment and portions of intellectual property. There are other things that could be done earlier on, like the counterfeiting code.

Services, perhaps specific industry-related agreements within services, might take longer—that is, through the full-term—but maybe a framework agreement could be negotiated and be brought back to the Congress by January or February of 1989.

I see the possibility of a two-stage type of bringing home the agreements. I certainly share with you the fact that the 4-year objective ought to be stuck to. These things tend to fill up. You know, if you set a deadline of 6 years, why, then, that is how long it will take you. If you set a deadline of 4 years, then that, presumably, is how long it will take you. So the shorter, the better.

It will not be easy, I will be the first to admit, because some of these areas are new. We ourselves do not have a 100-percent notion of how they will come out. We have an idea what we want to go in with, but we do not have a good idea of what we are going to come out with. But I would hope that we could have this two-stage approach. I think it is good for the system to show that the negotiating process does work. It helps politically, and it gives some momentum to the negotiating process.

I think one of the downsides, if you will, of the Tokyo round was that it seemed to drag on interminably. I do not think we need to do that. At the same time, I do not necessarily predict that we will reach agreement on all 14 or 15 groups. There may be some negotiating groups which just do not reach agreement within that time constraint.

Mr. PEASE. Okay. Thank you very much, Mr. Ambassador.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, gentlemen, for your testimony. Mike, how many people did you say you had on board now?

Mr. DOYLE. 132, sir.

Mr. FRENZEL. 132. And that has been a relatively constant number?

Mr. SMITH. Yes, sir. It has gone between 131 to 136 over the last 5 years.

Mr. FRENZEL. Mike, you were talking about the teams into which you are organized for the Uruguay round. Did you have the same sort of organization for the Tokyo round?

Mr. SMITH. No, sir, we did not, to my knowledge. In the first place, this round is being handled a little differently than the last round in the sense that we are not establishing in Geneva a large office like we did during the Tokyo round.

You will recall at one time we had something like between 40 and 50 people, including staff, in Geneva. We do not intend to do that this time. It quite frankly is cheaper to fly people to Geneva than it is to install them there. It cost us about $120,000 or $130,000 by the time you put a person in Geneva. You can buy an awful lot of TWA airplane tickets or Pan Am airplane tickets to Geneva to cover that. So that structure, Mr. Frenzel, is different.

Second, we have not yet named our negotiators. What we now have is an interim process of what we call leads, and each of those leads is within the USTR. It is Ambassador Yeutter's intent, and he has asked the Secretary of the Treasury, State, and Commerce to give him some names of people, career people who could serve as negotiators, the actual person who would be doing the negotiating, who would be backed by the lead person. The lead person in USTR is responsible for the pulling together of an interagency objective paper and position papers up to the negotiating stage.

Ambassador Yeutter's intent is to, if you will, spread the burden of negotiating around, not only within USTR but other agencies as well, for a number of reasons. He feels very strongly the notion of collegiality within the interagency process. Second, it is just a question of resources.

We cannot do it all, nor in a way should we do it all. You will recall, Mr. Frenzel, as well, that during the Tokyo round we actually begged, borrowed and stole people from other agencies to come to USTR, and they really were in the USTR only for budgetary purposes. They were not full-time or previous USTR employees. It was only after 1979 in the Trade Agreements Act that we began to build up a permanent USTR staff.

Mr. **Frenzel**. Thank you. I believe in your testimony you indicated that you want to set up an arrangement whereby you can exchange personnel with State, Commerce, and ITC. Now, in the past, you have drawn down a lot of employees from other agencies, but you have never sent any over to the other agencies. Is that correct?

Mr. **Smith**. That is correct, sir.

Mr. **Frenzel**. Do you still belong to the State Department?

Mr. **Smith**. Yes, sir. I am a career minister in the Foreign Service of the United States.

Mr. **Frenzel**. How long have you been with USTR?

Mr. **Smith**. I have been on reimbursable detail, sir, since August 4, 1975.

Mr. **Frenzel**. You are getting to be a long temporary.

Mr. **Smith**. That is what people over in the State Department are thinking, too, sir.

Mr. **Frenzel**. Yes, sir. There may be no home for you.

Mr. **Smith**. That is what they all are saying, too.

Mr. **Frenzel**. Okay. I think that is a wonderful idea, and I hope that one will be progressed.

Mr. **Smith**. May I just say that we are trying to exchange. This is not hopefully just a one-way exchange, although we have, if you will, been trying to work out a deal in good negotiating style that we would get four or five for one.

Mr. **Frenzel**. You have a smaller pool.

Mr. **Smith**. Right.

Mr. **Frenzel**. A larger pool of talent, but smaller numbers of people.

Mr. **Smith**. Exactly. I could not agree with you more.

Mr. **Frenzel**. That is important. One of the things that I noticed, at least in the agenda setting at the Uruguay round, there was a splendid spirit of cooperation between the agencies involved, and I assume that continues.

Mr. **Smith**. Yes, sir.

Mr. **Frenzel**. And while you did not mention going to the Department of Agriculture for nominations for lead individuals, I assume that they would be included as well as the ones you mentioned.

Mr. **Smith**. Oh, yes, they would be. As an old hand at this, I do have a feeling somehow that my boss will be very actively involved in the agricultural talks. So he and Secretary Lyng are following this very closely.

Mr. **Frenzel**. Thank you very much. Mr. Chairman, I yield the balance of my time.

Chairman **Gibbons**. Mr. Downey.

Mr. **Downey**. Thank you, Mr. Chairman. I also want to thank the witnesses for testifying. I appreciate some of the problems that you have with fluctuating currency, and the particular idea that you suggested of having an escrow account makes enormous sense to me.

If you could refresh my recollection about the process of presenting agreements to the Congress on trade patterns, is that done in the form of treaties or executive agreements? And how do we determine which will come back and in what form?

Mr. **Holmer**. As I recall, normally those will be presented in the form of executive agreements.

Mr. **Downey**. What is the difference in your legal perspective for an executive agreement versus a treaty? And why is it an executive agreement?

Mr. **Holmer**. Well, as I recall the GATT itself when it came back, it was considered as a treaty as opposed to an executive agreement.

Mr. **Downey**. The GATT was an executive agreement.

Mr. **Holmer**. The GATT was an executive agreement. Off the top of my head, Mr. Downey, I do not have a good answer for you.

Mr. **Downey**. There is a distinction in law except for the process of ratification here in Congress; is that correct?

Mr. **Holmer**. That is correct.

Mr. **Downey**. It still has the same full force and effect, whether it were a treaty with two-thirds or an executive agreement.

Mr. **Holmer**. That is correct.

Mr. **Downey**. Do you know offhand, and I am not trying to pin you down to this, why it is the GATT, which is clearly important, is an executive agreement as opposed to a treaty?

Mr. **Holmer**. I do not know, but we would be happy to provide something for the record on that.

Mr. **Downey**. Would you please? Do any of the other witnesses know?

Mr. **Smith**. Well, if I recall correctly, the original idea was to have the ITO, the International Trade Organization, and that failed in the Congress. So like the phoenix from the ashes, the GATT sort of arose incorporating a portion of what was, if you will, the draft ITO. And it became a contractual obligation among then the 26 countries in 1947 or 1948, coming out of the Havana Conference. And it sort of willy-nilly became gradually incorporated into the United States—and I am not a lawyer—but in the U.S. law, if you will, through the back door. It has never been ratified by any country in the world except Haiti.

Mr. **Downey**. Thank you for the history. The reason I ask, I am trying to figure out the differences of why things are executive agreements and why things are treaties. And I am not now sure any more in my mind what difference it makes except that it is a lot easier to pass an executive agreement than it is to ratify a treaty if there is absolutely no difference in terms of their effect internationally or domestically.

Mr. **Holmer**. We would be happy to respond in writing.

Mr. **Downey**. For instance, I do not want to belabor this point, but the SALT I agreement was an executive agreement. The ABM agreement was a treaty. GATT, which is fairly important, is an executive agreement, and further bilateral relationships that we have, trading relationships, appear to me from what you have mentioned to be sent back to the Congress in the form of executive agreement. I would just like a rationale for that, if you would.

Mr. **Holmer**. We would be happy to respond in writing.

[The following was subsequently received:]

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

May 15, 1987

The Honorable Thomas Downey
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman Downey:

During a House Trade Subcommittee hearing on May 12, you asked about the similarities and differences between treaties and executive agreements. This letter responds to that request.

Both treaties and executive agreements (which may be called various names, including agreements, arrangements, understandings, and exchanges of letters) are pacts between sovereign governments, under which each party undertakes certain obligations. The obligations accepted by each party are equally binding from the perspective of international law, regardless whether the agreement takes the form of a treaty or an executive agreement. Under either, the obligations continue to apply according to their terms regardless of any subsequent changes in relevant domestic law.

Unlike an executive agreement, a treaty is submitted by the President to the Senate for its advice and consent to ratification. Signature of a treaty by the United States indicates the Executive Branch's intention to seek domestic authority to ratify it. The President then submits the agreement to the Senate, and the United States ratifies the treaty in accordance with its terms once the advice and consent of the Senate is obtained.

There are two main types of executive agreements. The more common type is the legislative-executive agreement, authorized by legislation that pre- and/or postdates conclusion of the agreement. For example, certain textile agreements are expressly authorized by section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854; and the various Tokyo Round agreements were authorized by the Trade Act of 1974 and the Trade Agreements Act of 1979. These are executive agreements rather than treaties, but they are authorized by domestic legislation.

A less common type of executive agreement does not involve any statutory authority. A sole executive agreement is based exclusively on the President's Constitutional powers. The United States-Iran claims agreement is such an agreement. (Its formal name is the

Declarations of the Government of the Democratic and Popular Republic of Algeria concerning commitments and settlement of claims by the United States and Iran with respect to resolution of the crisis arising out of the detention of 52 United States nationals in Iran.)

The main possible difference between treaties and executive agreements is their relationship to other domestic law. The issue is whether an executive agreement prevails over an earlier inconsistent U.S. statute, as does a treaty. The Supreme Court has ruled that an executive agreement does prevail over an inconsistent state statute, but has not ruled on the federal question. Lower court rulings have suggested that the "later in time" rule does not apply to executive agreements (so that an executive agreement "later in time" would not prevail over an inconsistent, earlier federal statute).

Finally, I note that the Case-Zablocki Act, 1 U.S.C. 112b, requires the Department of State to transmit to the Congress copies of all agreements other than treaties. While treaties are submitted exclusively to the Senate, copies of other international agreements are provided to the Congress.

I would be happy to try to answer any other questions you may have on this subject.

Sincerely,

Alan

Alan F. Holmer
General Counsel

AFH:jb

Mr. DOWNEY. I have no further questions.

Chairman GIBBONS. Mr. Crane, who had to go to another meeting, asked me to inquire: Is there any chance of any progress for an agreement with Taiwan, a bilateral agreement with Taiwan? Are you all undertaking any, contemplating any bilateral agreement, such as the Canadian agreement, with Taiwan? A free trade arrangement?

Mr. SMITH. No, sir.

Chairman GIBBONS. He wanted me to urge you to do that.

Let me ask you this. We are going to negotiate in 15 negotiating groups in Geneva. Do we know how our trading partners, our principal trading partners, will be negotiating? Are we going to be meeting them in this 15-group arrangement? Are they going to have the same arrangement?

Mr. SMITH. Yes, sir. Most countries, most of the major players, have decided—much as we did—not to put large staffs in Geneva. They are running, if you will, their trade negotiating operation out of their capitals, for cost reasons and perhaps for other reasons. They are structured much as we are with a central coordinating office, sometimes in the Foreign Ministry, sometimes in the Trade Ministry, depending on how that particular country is set up. In the Commission, it is largely being handled out of Brussels as well, even though they are only 45 minutes by airplane from Geneva.

So most of the countries thus far have said that they are going to try to work it out this way just as a budgetary, cost-effectiveness point of view.

Also, there is one significant difference than perhaps the early stages of the Tokyo round, and that is the electronic and computer and communications revolution has made it quite possible to communicate instantly between the home office, if you will, and Geneva, including facsimile transmissions and all that sort of stuff. So it is really quite easy to at least do most of the work, if you will, across the wires.

Chairman GIBBONS. When we deal with the Europeans, we will be dealing with them as a community, as we always have in the past, as I understand it?

Mr. SMITH. Yes. That is correct, sir. We will deal with the Commission. They will be negotiating for the 12 members of the Common Market.

Chairman GIBBONS. All right. Are there any other blocs like that that we will be dealing with? How about ASEAN?

Mr. SMITH. ASEAN, that is, of course, a question for the ASEANs. They have tended to, if you will, have it both ways. They have a system whereby one country of the six ASEANs is the negotiating interface between one of the major players—be it the United States, the Community, or Japan. And they try to work as as bloc, if you will, or as a region in Geneva. That is not always successful. It depends largely on the personalities involved. Their missions in Geneva are relatively small.

Recognizing that, we designated one of our positions in USTR, Mr. Blum's position, as sort of our roving interlocutor with these countries so that he can go to the home capitals and, if you will, exchange ideas and views initially before the process gets to Geneva, recognizing the small staffs that they do have in Geneva.

The only other regional group that I know of which is talking at all in sort of a bloc position is what is known as the Cairns group. Cairns is some place in Australia. That is a group where 14 agricultural "fair traders" gathered before the Punta del Este meeting to come up with a common position. The Cairns group is made up of both developed and developing trading countries, all of whom purport to be nonsubsidizers in exports. And they have a bloc position and try to, if you will, if you have the Community over here on one extreme of position, they tend to be over here on the other extreme of position and we sort of are in the middle. That is the only other major regional group that I see.

Chairman GIBBONS. Now, these 15 negotiating groups, they will be subject matter groups? Is that right? And you have assigned to each one of those 15 groups the subject matter?

Mr. SMITH. That is correct, sir. Tropical products, tariffs, MTM agreements, services, investment.

Chairman GIBBONS. If it is not classified information, could you furnish that to the Committee?

Mr. SMITH. Oh, absolutely, sir. It is in the Punta del Este declaration.

Chairman GIBBONS. It is in the declaration.

Mr. SMITH. Yes, sir.

Chairman GIBBONS. And could you furnish us with the names of the people involved as those are available?

Mr. SMITH. We would be more than happy to. Absolutely.

Chairman GIBBONS. Will the Japanese, for instance, be using 15 groups?

Mr. SMITH. Yes, sir. Well, let me put it this way. More accurately, each of the major players is clearly going to be represented at each of the 15 negotiating groups, and they have divided up their ministries much like we have to cover the new round process.

Chairman GIBBONS. Will there be a GATT coordinator for each of these 15 groups?

Mr. SMITH. Right now in Japan, since GATT comes under the Foreign Office, legally comes under the Foreign Office, Ambassador Kobiyashi is the, if you will, coordinator in Japan. But they work on a consensus process and interagency process, much as we do. I would imagine that on, for example, the investment issue their Ministry of Finance is taking a lead position or certainly a dominant position in that, much like in the United States the Department of Treasury is taking it.

Chairman GIBBONS. Well, what I am thinking about, in the GATT who is going to set the agenda for each meeting? Who is going to call the meeting?

Mr. SMITH. The Chairman for each of the 15 groups have been named. They have all held their meetings. The agendas have been agreed to by the participating contracting parties; and, if you will, the procedural schedule, logistics and things like that, have been established for the rest of this year already.

The Chairman were elected or chosen, if you will; some are government people and some are not government people. For example, the Chairman on the functioning of the GATT system is the former Assistant Secretary of State Mr. Jules Katz, who is no longer in government, but he is the Chairman of that negotiating group in Geneva.

Chairman GIBBONS. Well, it would help us if we could try to follow these from the outside. Perhaps I would say to the staff we ought to have a hearing on that or something to help us follow this a little more closely. I do not know that everybody feels as I do on that subject. I would like to hear from my committee members if they think it would be appropriate.

Mr. SMITH. We will provide for you also, Mr. Chairman, a list of all the Chairmen of the negotiating groups, the countries from which they come and a schedule of the meetings for the rest of this year for each of the negotiating groups.

Mr. FRENZEL. Will the chairman yield?

Chairman GIBBONS. Certainly.

Mr. FRENZEL. Is Ambassador Samuels in town now or has he gone back?

Mr. SMITH. Ambassador Samuels went back to Geneva over the weekend, I believe, sir.

Mr. FRENZEL. Mr. Chairman, I think it would be a good idea that when he is next in town—when does he come in, monthly?

Mr. SMITH. We try to get him here every four to five weeks, sir.

Mr. FRENZEL. Probably the subcommittee ought to meet with him for an update if the chairman thinks that is worthwhile.

Chairman GIBBONS. I think it would be a good idea if we asked the staff to follow that and see what could be done. We would like a list of the players and the schedules and the agendas and things of that sort, so that if we need any special input.

Mr. SMITH. We will try to get you a list as well, sir, of whom we believe to be the, if you will, coordinator within each foreign government for this; for example, Ambassador Kobiyashi.

Chairman GIBBONS. That would be helpful because, frankly, I have so many parading by my office it is a little hard to keep them all straight.

Mr. SMITH. Yes, sir.

Chairman GIBBONS. Very fine people, and I enjoy talking with them. Sometimes I do not know where they really fit in the picture.

[The following was subsequently received:]

ORGANIZATION OF THE URUGUAY ROUND

TRADE NEGOTIATING COMMITTEE
(Chair - Minister Enrique Iglesias - Uruguay
Arthur Dunkel - GATT)

[Standstill/Rollback Surveillance Body - M. Mathur - GATT]

NEGOTIATING GROUP ON GOODS
(Arthur Dunkel - GATT)

1. TARIFFS)
2. NON-TARIFF MEASURES)
3. NATURAL-RESOURCE-BASED PRODUCTS)
4. TEXTILES AND CLOTHING)

(Amb. Lindsay Duthie - Australia)

5. AGRICULTURE

(Aart de Zeeuw - Netherlands)

6. TROPICAL PRODUCTS

(Paul Leong - Malaysia
Amb. Siaka Coulibaly - Ivory Coast - Vice Chair)

7. GATT ARTICLES

(John Weekes - Canada)

8. MTN AGREEMENTS AND ARRANGEMENTS

(Kim Chul Su - Korea)

9. SAFEGUARDS

(Amb. Georges Maciel - Brazil)

10. SUBSIDIES AND COUNTERVAILING MEASURES

(Michael Cartland - Hong Kong)

11. INTELLECTUAL PROPERTY/ COUNTERFEIT

(Amb. Lars Anell - Sweden)

12. INVESTMENT

(Amb. Tomohiko Kobayashi - Japan)

13. DISPUTE SETTLEMENT

(Amb. Julio Lacarte - Uruguay)

14. FUNCTIONING OF THE GATT SYSTEM

(Julius Katz - United States)

NEGOTIATING GROUP ON SERVICES
(Amb. Felipe Jaramillo - Colombia)

USTR URUGUAY ROUND ISSUE MANAGEMENT STRUCTURE

USG GROUPS	USTR ISSUE LEADS	GATT GROUPS
1. Standstill/ Rollback Surveillance Body	Charles Blum AUSTR for Multilateral Negotiations	Surveillance Body
2. Tariffs	Chris Marcich Office of GATT Affairs	Tariffs
3. Nontariff Measures	Doug Newkirk AUSTR for GATT Affairs	Nontariff Measures
4. Tropical Products	Betsy Stillman Office of Latin America and Caribbean	Tropical Products
5. Natural Resource Based Products	Marian Barell DAUSTR for Industry	Natural Resource Based Products
6. Agriculture	Suzanne Early AUSTR for Agriculture	Agriculture
7. Safeguards	Geza Feketekuty Counsellor to USTR	Safeguards
8. MTN Codes	Rich Meier DAUSTR for GATT Affairs	MTN Agreements and Arrangements
9. Subsidies and Countervailing Measures	Alan Holmer General Counsel	Subsidies and Countervailing Measures
10. Investment	Harvey Bale AUSTR for Trade Policy and Analysis	Investment
11. Services	Bruce Wilson AUSTR for Industry and Services	Group of Negotiations on Services
12. Intellectual Property	Alan Holmer General Counsel	Intellectual Property
13. Worker Rights	David Shark DAUSTR for Trade Policy Coordination	None
14. Functioning of the GATT System	Ambassadors Smith/ Samuels	Functioning of the GATT System
15. Dispute Settlement	Jane Bradley Legal Counsel (Geneva)	Dispute Settlement

16. State Trading*	Don Eiss DAUSTR for Trade Policy and Analysis	GATT Articles
17. Balance of Payments*	Harvey Bale AUSTR for Trade Policy and Analysis	GATT Articles
18. Infant Industry*	Peter Allgeier AUSTR for Asia and Pacific	GATT Articles

*Doug Newkirk is assigned the role of coordinator for all GATT Articles work.

GATT/AIR/2366 3 FEBRUARY 1987

SUBJECT: URUGUAY ROUND NEGOTIATING GROUP ON TARIFFS

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON TARIFFS, ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD ON 9 FEBRUARY 1987 AT 10.30 A.M. IN THE CENTRE WILLIAM RAPPARD, AND WILL CONTINUE LATER IN THE WEEK IF NECESSARY.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN/GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

(A) APPOINTMENT OF CHAIRMAN;

(B) FIRST EXCHANGE OF VIEWS ON SUBMISSION OF PROPOSALS BY PARTICIPANTS RELATING TO THE TARIFF NEGOTIATIONS;

(C) BROADENING AND UPDATING OF FACTUAL BASIS FOR THE TARIFF NEGOTIATIONS;

(D) OBSERVER ORGANIZATIONS (MTN/TNC/1);

(E) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE.

A. DUNKEL

87-0155

COPIE COPY

GATT/AIR/2367 3 FEBRUARY 1987

SUBJECT: URUGUAY ROUND NEGOTIATING GROUP ON NATURAL RESOURCE-BASED PRODUCTS

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON NATURAL RESOURCE-BASED PRODUCTS, ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD IN THE MORNING OF 10 FEBRUARY 1987, STARTING AT 10 A.M. IN THE CENTRE WILLIAM RAPPARD, AND WILL CONTINUE LATER IN THE WEEK IF NECESSARY.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN/GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

A. APPOINTMENT OF CHAIRMAN;

B. FIRST EXCHANGE OF VIEWS AND/OR PROPOSALS FOR ORGANIZING THE WORK OF THE GROUP;

C. REVIEW OF EXISTING DATA-BASE ESTABLISHED IN THE CONTEXT OF THE WORKING PARTY ON PROBLEMS OF TRADE IN CERTAIN NATURAL RESOURCE PRODUCTS;

D. OBSERVER ORGANIZATIONS (MTN/TNC/1);

E. OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING, ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE.

A. DUNKEL

COPIE COPY

GATT/AIR/2368 4 FEBRUARY 1987

SUBJECT: URUGUAY ROUND NEGOTIATING GROUP ON NON-TARIFF MEASURES

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON NON-TARIFF MEASURES, ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD IN THE AFTERNOON OF 9 FEBRUARY 1987, STARTING AT 3 P.M. IN THE CENTRE WILLIAM RAPPARD, AND WILL CONTINUE LATER IN THE WEEK IF NECESSARY.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN/GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

(A) APPOINTMENT OF CHAIRMAN;

(B) FIRST EXAMINATION OF THE ISSUES TO BE COVERED, INCLUDING THE RELATIONSHIP BETWEEN THE NEGOTIATIONS IN THIS AREA AND OTHER AREAS OF THE NEGOTIATIONS;

(C) ESTABLISHMENT OF AN ADEQUATE DATA BASE FOR NEGOTIATION;

(D) OBSERVER ORGANIZATIONS (MTN/TNC/1);

(E) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE.

A. DUNKEL

COPIE COPY

GATT/AIR/2369 4 FEBRUARY 1987

SUBJECT: URUGUAY ROUND NEGOTIATING GROUP ON TEXTILES AND CLOTHING

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON TEXTILES AND CLOTHING ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD IN THE AFTERNOON OF 10 FEBRUARY 1987, STARTING AT 3 P.M. IN THE CENTRE WILLIAM RAPPARD, AND WILL CONTINUE LATER IN THE WEEK IF NECESSARY.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN/GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

(A) APPOINTMENT OF CHAIRMAN;

(B) CONSIDERATION OF THE TYPE OF PREPARATORY WORK TO BE UNDERTAKEN IN THE AREA OF TEXTILES AND CLOTHING, E.G. CONTRIBUTIONS FROM THE ANNUAL REPORTS OF THE TSB, INFORMATION PROVIDED BY THE SUB-COMMITTEE ON ADJUSTMENT AND OTHER SOURCES, AS WELL AS MATERIAL FROM THE WORKING PARTY ON TEXTILES AND CLOTHING INCLUDING THE RELATED DOCUMENTATION AS UPDATED;

(C) OBSERVER ORGANIZATIONS (MTN/TNC/1);

(D) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE.

A. DUNKEL

COPIE COPY

UNCLASSIFIED
Department of State
INCOMING
TELEGRAM

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ACTION EB-00

INFO  LOG-00     COPY-01  ADS-00    AID-00    INR-10    SS-00     OIC-02
      CIAE-00    DINT-05  DODE-00   H-01      IO-19     NSAE-00   COME-00
      L-03       LAB-04   CTME-00   TRSE-00   ITC-01    PA-02     CEA-01
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E.O. 12356: N/A
TAGS: ETRD, GATT
SUBJECT: URUGUAY ROUND GROUP ON SAFEGUARDS

1. THE FOLLOWING IS THE TEXT OF GATT/AIR/2380 ANNOUNCING THE FIRST MEETING OF THE URUGUAY ROUND NEGOTIATING GROUP ON SAFEGUARDS. BEGIN TEXT:

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON SAFEGUARDS, ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD ON 10 MARCH 1987, STARTING AT 10 A.M. IN THE CENTRE WILLIAM RAPPARD, AND WILL CONTINUE ON 11 MARCH 1987, IF NECESSARY.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN/GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

- (A) APPOINTMENT OF CHAIRMAN;

- (B) EXAMINATION OF THE ISSUES IN THIS AREA;

- (C) OBSERVER ORGANIZATIONS (MTN/TNC/1);

- (D) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE. END TEXT.
SAMUELS

GATT/AIR/2376 16 FEBRUARY 1987

SUBJECT: URUGUAY ROUND NEGOTIATING GROUP ON TRADE-RELATED INVESTMENT MEASURES

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON TRADE-RELATED INVESTMENT MEASURES, ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD ON 2 APRIL 1987 AT 10 A.M. IN THE CENTRE WILLIAM RAPPARD, AND WILL CONTINUE ON 3 APRIL 1987, IF NECESSARY.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN/GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

(A) APPOINTMENT OF CHAIRMAN;

(B) FIRST EXCHANGE OF VIEWS, INCLUDING PROPOSALS BY PARTICIPANTS FOR ORGANIZING THE WORK OF THE GROUP;

(C) OBSERVER ORGANIZATIONS (MTN/TNC/1);

(D) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE.

A. DUNKEL

UNCLASSIFIED
Department of State

INCOMING TELEGRAM

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PAGE 01        GENEVA  03256  181636Z                                   3866
ACTION EB-00

INFO  LOG-00    COPY-01 ADS-00    AID-00    INR-10    EUR-00    SS-00
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UNCLAS GENEVA 03256

PASS ELECTRONICALLY TO USTR FOR AMB. SMITH
STATE FOR IO OICB

E.O. 12356: N/A
TAGS: ETRD, GATT
SUBJECT: URUGUAY ROUND GROUP ON FUNCTIONING OF THE GATT SYSTEM

1. THE FOLLOWING IS A TRANSMITTAL OF GATT AIR/2395 ANNOUNCING THE FIRST MEETING OF THE NEGOTIATING GROUP ON FUNCTIONING OF THE GATT SYSTEM.

2. BEGIN TEXT:

1. THE FIRST MEETING OF THE NEGOTIATING GROUP ON FUNCTIONING OF THE GATT SYSTEM, ESTABLISHED BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, WILL BE HELD ON 7 APRIL 1987 IN THE CENTRE WILLIAM RAPPARD, STARTING AT 10:00 A.M.

2. THE MAIN DOCUMENT IS THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, CONTAINING THE NEGOTIATING PLAN FOR THE GROUP (MTN.GNG/5).

3. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

(A) APPOINTMENT OF CHAIRMAN;

(B) FIRST EXAMINATION OF ISSUES ON THE BASIS OF PROPOSALS BY PARTICIPANTS;
(C) OBSERVER ORGANIZATIONS (MTN.TNC/1);

(D) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

4. GOVERNMENTS PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE. A. DUNKEL. END TEXT. SAMUELS

UNCLASSIFIED
Department of State

INCOMING
TELEGRAM

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PAGE 01        GENEVA  03301  191641Z                                   1016
ACTION STR-17

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GNG

UNCLAS GENEVA 03301

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E.O. 12356: N/A
TAGS: EAGR, ETRD, GATT
SUBJECT: URUGUAY ROUND: GROUP OF NEGOTIATIONS ON GOODS

1. THE FOLLOWING IS GATT/AIR/2398 RECEIVED BY USTR/GENEVA ANNOUNCING THE NEXT MEETING OF THE GROUP OF NEGOTIATIONS ON GOODS.

2. BEGIN TEXT:

1. IN ACCORDANCE WITH THE DECISION TAKEN BY THE GROUP OF NEGOTIATIONS ON GOODS ON 28 JANUARY 1987, AND IN DISCHARGE OF ITS FUNCTIONS AS SET OUT IN SECTION G OF THE MINISTERIAL DECLARATION, THE GROUP WILL HOLD ITS SIXTH MEETING ON MONDAY, 13 APRIL 1987. THE MEETING WILL BEGIN AT 3 P.M., IN THE CENTRE WILLIAM RAPPARD.

2. THE PROVISIONAL AGENDA FOR THIS MEETING IS AS FOLLOWS:

I. REVIEW OF PROGRESS IN THE NEGOTIATIONS UNDER PART I OF THE DECLARATION;

II. OBSERVER STATUS FOR INTERNATIONAL ORGANISATIONS;

III. OTHER BUSINESS, INCLUDING DATE OF NEXT MEETING.

3. THE RECORDS OF THE FIRST MEETINGS OF EACH OF THE NEGOTIATING GROUPS WILL BE AVAILABLE TO THE GNG.

4. IN ACCORDANCE WITH THE DECISION TAKEN BY THE TRADE NEGOTIATIONS COMMITTEE ON 25 JANUARY 1987 THAT REPORTS OF THE SURVEILLANCE BODY WOULD BE TRANSMITTED TO THE GROUP OF NEGOTIATIONS ON GOODS FOR ITS INFORMATION, THE RECORD OF THE FIRST MEETING OF THE SURVEILLANCE BODY, HELD ON 26 FEBRUARY 1987, HAS BEEN TRANSMITTED IN DOCUMENT MTN.SB/1.

5. GOVERNMENTS PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS AND WISHING TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE. A. DUNKEL. END OF TEXT. LAVOREL

ACTION OFFICE PLEASE NOTE DATE AND TIME OF RECEIPT AND RETURN COPY TO OC/DC/T/CI.

UNCLASSIFIED
Department of State

INCOMING
TELEGRAM

PAGE 01 GENEVA 04573 231552Z 5855
ACTION EB-00

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UNCLAS GENEVA 04573

PASS USTR ELECTRONICALLY FOR KEN CLAYTON AND SUZY EARLY; AGRICULTURE ELECTRONICALLY FOR JOE O'MARA/ITP/FAS AND JOHN HUDSON/ITP/FAS

E.O. 12356: N/A
TAGS: EAGR, GATT
SUBJECT: NEGOTIATING GROUP ON AGRICULTURE

1. OAC IN USTR/GENEVA RECEIVED GATT/AIR/2411 INFORMING THAT THE SECOND MEETING OF THE NEGOTIATING GROUP ON AGRICULTURE WILL BEGIN AT 3 P.M. ON TUESDAY 5 MAY AND CONTINUE AS NECESSARY THROUGHOUT THE WEEK.

2. IT ALSO INFORMED OF THE FOLLOWING AGENDA PROPOSED FOR THE MEETING:

- A. CONTINUATION OF WORK UNDER THE INITIAL PHASE OF THE NEGOTIATING PLAN ON AGRICULTURE.

- B. SUBMISSION OF SUPPLEMENTARY INFORMATION ON MEASURES AND POLICIES AFFECTING TRADE IN AGRICULTURE IN THE AG/FOR/- SERIES.

- C. OBSERVER ORGANIZATIONS;

- D. CONSIDERATION OF FURTHER WORK AND MEETINGS OF THE NEGOTIATING GROUP;

- E. OTHER BUSINESS.

LAVOREL

UNCLASSIFIED

UNCLASSIFIED
Department of State

INCOMING
TELEGRAM

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PAGE 01        GENEVA  04472  220831Z                                   6811
ACTION EB-00

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UNCLAS GENEVA 04472

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E.O. 12356: N/A
TAGS: ETRD, GATT, USTR, EAGR
SUBJECT: NEXT MEETING OF GROUP ON TROPICAL PRODUCTS

USTR/GENEVA HAS RECEIVED GATT/AIR/2410 DATED 16 APRIL 1987 WHICH READS AS FOLLOWS:

BEGIN TEXT:

1. THE SECOND MEETING OF THE NEGOTIATING GROUP ON TROPICAL PRODUCTS WILL BE HELD ON 11 AND 12 MAY 1987, STARTING AT 11 A.M. ON MONDAY, 11 MAY IN THE CENTRE WILLIAM RAPPARD.

2. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING HAVING REGARD TO THE NEGOTIATING PLAN ADOPTED FOR THE GROUP FOR THE INITIAL PHASE (MTN/GNG/5):

-- A. COMPILATION OF BACKGROUND MATERIAL FOR NEGOTIATIONS;

-- B. SUBMISSION OF INITIAL PROPOSALS AND OTHER INPUTS BY PARTICIPANTS AIMED AT ACHIEVING THE AGREED OBJECTIVES OF NEGOTIATIONS IN THIS AREA;

-- C. OBSERVER ORGANIZATIONS;

-- D. OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

3. GOVERNMENTS OF STATES PARTICIPATING IN THE MULTILATERAL TRADE NEGOTIATIONS, WHICH WISH TO BE REPRESENTED AT THIS MEETING ARE INVITED TO INFORM ME OF THE NAMES OF THEIR REPRESENTATIVES AS SOON AS POSSIBLE. END TEXT. LAVOREL

UNCLASSIFIED

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Department of State
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PAGE 01 GENEVA 04908 011603Z
9072
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TO SECSTATE WASHDC 9337

UNCLAS GENEVA 04908

PASS USTR FOR NEWKIRK

E.O. 12356: N/A
TAGS: ETRD, GATT
SUBJECT: URUGUAY ROUND GROUP ON GATT ARTICLES

1. THE SECOND MEETING OF THE NEGOTIATING GROUP ON GATT ARTICLES WILL BE HELD ON 13 MAY 1987. THE FOLLOWING AGENDA IS PROPOSED FOR THE MEETING:

- (A) CONTINUATION OF CONSIDERATION OF REQUESTS BY INTERESTED CONTRACTING PARTIES FOR REVIEW OF GATT ARTICLES, PROVISION AND DISCIPLINES.

- (B) OBSERVER ORGANIZATIONS.

- (C) OTHER BUSINESS, INCLUDING ARRANGEMENTS FOR THE NEXT MEETING OF THE NEGOTIATING GROUP.

BRADLEY

UNCLASSIFIED

GENERAL AGREEMENT ON
TARIFFS AND TRADE

MIN.DEC
20 September 1986

Multilateral Trade Negotiations
The Uruguay Round

MINISTERIAL DECLARATION ON THE URUGUAY ROUND

Ministers, meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este, have decided to launch Multilateral Trade Negotiations (The Uruguay Round). To this end, they have adopted the following Declaration. The Multilateral Trade Negotiations will be open to the participation of countries as indicated in Parts I and II of this Declaration. A Trade Negotiations Committee is established to carry out the negotiations. The Trade Negotiations Committee shall hold its first meeting not later than 31 October 1986. It shall meet as appropriate at Ministerial level. The Multilateral Trade Negotiations will be concluded within four years.

PART I
NEGOTIATIONS ON TRADE IN GOODS

The CONTRACTING PARTIES meeting at Ministerial level

DETERMINED to halt and reverse protectionism and to remove distortions to trade

DETERMINED also to preserve the basic principles and to further the objectives of the GATT

DETERMINED also to develop a more open, viable and durable multilateral trading system

CONVINCED that such action would promote growth and development

MINDFUL of the negative effects of prolonged financial and monetary instability in the world economy, the indebtedness of a large number of less developed contracting parties, and considering the linkage between trade, money, finance and development

DECIDE to enter into Multilateral Trade Negotiations on trade in goods within the framework and under the aegis of the General Agreement on Tariffs and Trade.

A. OBJECTIVES

Negotiations shall aim to:

(i) bring about further liberalization and expansion of world trade to the benefit of all countries, especially less-developed contracting parties, including the improvement of access to markets by the reduction and elimination of tariffs, quantitative restrictions and other non-tariff measures and obstacles;

(ii) strengthen the rôle of GATT, improve the multilateral trading system based on the principles and rules of the GATT and bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;

(iii) increase the responsiveness of the GATT system to the evolving international economic environment, through facilitating necessary structural adjustment, enhancing the relationship of the GATT with the relevant international organizations and taking account of changes in trade patterns and prospects, including the growing importance of trade in high technology products, serious difficulties in commodity markets and the importance of an improved trading environment providing, *inter alia*, for the ability of indebted countries to meet their financial obligations;

(iv) foster concurrent cooperative action at the national and international levels to strengthen the inter-relationship between trade policies and other economic policies affecting growth and development, and to contribute towards continued, effective and determined efforts to improve the functioning of the international monetary system and the flow of financial and real investment resources to developing countries.

B. GENERAL PRINCIPLES GOVERNING NEGOTIATIONS

(i) Negotiations shall be conducted in a transparent manner, and consistent with the objectives and commitments agreed in this Declaration and with the principles of the General Agreement in order to ensure mutual advantage and increased benefits to all participants.

(ii) The launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis by agreement prior to the formal conclusion of the negotiations. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

(iii) Balanced concessions should be sought within broad trading areas and subjects to be negotiated in order to avoid unwarranted cross-sectoral demands.

(iv) The CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement and in the Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries applies to the negotiations. In the implementation of standstill and rollback, particular care should be given to avoiding disruptive effects on the trade of less-developed contracting parties.

(v) The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

(vi) Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

(vii) Special attention shall be given to the particular situation and problems of the least-developed countries and to the need to encourage positive measures to facilitate expansion of their trading opportunities. Expeditious implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least-developed countries shall also be given appropriate attention.

C. STANDSTILL AND ROLLBACK

Commencing immediately and continuing until the formal completion of the negotiations, each participant agrees to apply the following commitments:

Standstill

(i) not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement or the Instruments negotiated within the framework of GATT or under its auspices;

(ii) not to take any trade restrictive or distorting measure in the legitimate exercise of its GATT rights, that would go beyond that which is necessary to remedy specific situations, as provided for in the General Agreement and the Instruments referred to in (i) above;

(iii) not to take any trade measures in such a manner as to improve its negotiating positions;

Rollback

(i) that all trade restrictive or distorting measures inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, shall be phased out or brought into conformity within an agreed timeframe not later than by the date of the formal completion of the negotiations, taking into account multilateral agreements, undertakings and understandings, including strengthened rules and disciplines, reached in pursuance of the Objectives of the Negotiations;

(ii) there shall be progressive implementation of this commitment on an equitable basis in consultations among participants concerned, including all affected participants. This commitment shall take account of the concerns expressed by any participant about measures directly affecting its trade interests;

(iii) there shall be no GATT concessions requested for the elimination of these measures.

Surveillance of standstill and rollback

Each participant agrees that the implementation of these commitments on standstill and rollback shall be subject to multilateral surveillance so as to ensure that these commitments are being met. The Trade Negotiations Committee will decide on the appropriate mechanisms to carry out the surveillance, including periodic reviews and evaluations. Any participant may bring to the attention of the appropriate surveillance mechanism any actions or omissions it believes to be relevant to the fulfilment of these commitments. These notifications should be addressed to the GATT secretariat which may also provide further relevant information.

D. SUBJECTS FOR NEGOTIATION

Tariffs

Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants.

Non-tariff measures

Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions, without prejudice to any action to be taken in fulfilment of the rollback commitments.

Tropical products

Negotiations shall aim at the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms and shall cover both tariff and all non-tariff measures affecting trade in these products.

The CONTRACTING PARTIES recognize the importance of trade in tropical products to a large number of less developed contracting parties and agree that negotiations in this area shall receive special attention, including the timing of the negotiations and the implementation of the results as provided for in B(ii).

Natural resource-based products

Negotiations shall aim to achieve the fullest liberalization of trade in natural resource-based products, including in their processed and semi-processed forms. The negotiations shall aim to reduce or eliminate tariff and non-tariff measures, including tariff escalation.

Textiles and clothing

Negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade.

Agriculture

The CONTRACTING PARTIES agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:

(i) improving market access through, inter alia, the reduction of import barriers;

(ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;

(iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.

In order to achieve the above objectives, the negotiating group having primary responsibility for all aspects of agriculture will use the Recommendations adopted by the CONTRACTING PARTIES at their Fortieth Session, which were developed in accordance with the GATT 1982 Ministerial Work Programme, and take account of the approaches suggested in the work of the Committee on Trade in Agriculture without prejudice to other alternatives that might achieve the objectives of the negotiations.

GATT Articles

Participants shall review existing GATT Articles, provisions and disciplines as requested by interested contracting parties, and, as appropriate, undertake negotiations.

Safeguards

(i) A comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations.

(ii) The agreement on safeguards:

- shall be based on the basic principles of the General Agreement;
- shall contain, _inter alia_, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement; and
- shall clarify and reinforce the disciplines of the General Agreement and should apply to all contracting parties.

MTN Agreements and Arrangements

Negotiations shall aim to improve, clarify, or expand, as appropriate, Agreements and Arrangements negotiated in the Tokyo Round of Multilateral Negotiations.

Subsidies and countervailing measures

Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues.

Dispute settlement

In order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and the procedures of the dispute settlement process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations.

Trade-related aspects of intellectual property rights, including trade in counterfeit goods

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters.

Trade-related investment measures

Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade.

E. FUNCTIONING OF THE GATT SYSTEM

Negotiations shall aim to develop understandings and arrangements:

(i) to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices of contracting parties and their impact on the functioning of the multilateral trading system;

(ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including, *inter alia*, through involvement of Ministers;

(iii) to increase the contribution of the GATT to achieving greater coherence in global economic policy-making through strengthening its relationship with other international organizations responsible for monetary and financial matters.

F. PARTICIPATION

(a) Negotiations will be open to:

(i) all contracting parties,

(ii) countries having acceded provisionally,

(iii) countries applying the GATT on a *de facto* basis having announced, not later than 30 April 1987, their intention to accede to the GATT and to participate in the negotiations,

(iv) countries that have already informed the CONTRACTING PARTIES, at a regular meeting of the Council of Representatives, of their intention to negotiate the terms of their membership as a contracting party, and

(v) developing countries that have, by 30 April 1987, initiated procedures for accession to the GATT, with the intention of negotiating the terms of their accession during the course of the negotiations.

(b) Participation in negotiations relating to the amendment or application of GATT provisions or the negotiation of new provisions will, however, be open only to contracting parties.

G. ORGANIZATION OF THE NEGOTIATIONS

A Group of Negotiations on Goods (GNG) is established to carry out the programme of negotiations contained in this Part of the Declaration. The GNG shall, inter alia:

(i) elaborate and put into effect detailed trade negotiating plans prior to 19 December 1986;

(ii) designate the appropriate mechanism for surveillance of commitments to standstill and rollback;

(iii) establish negotiating groups as required. Because of the interrelationship of some issues and taking fully into account the general principles governing the negotiations as stated in B(iii) above it is recognized that aspects of one issue may be discussed in more than one negotiating group. Therefore each negotiating group should as required take into account relevant aspects emerging in other groups;

(iv) also decide upon inclusion of additional subject matters in the negotiations;

(v) co-ordinate the work of the negotiating groups and supervise the progress of the negotiations. As a guideline not more than two negotiating groups should meet at the same time;

(vi) the GNG shall report to the Trade Negotiations Committee.

In order to ensure effective application of differential and more favourable treatment the GNG shall, before the formal completion of the negotiations, conduct an evaluation of the results attained therein in terms of the Objectives and the General Principles Governing Negotiations as set out in the Declaration, taking into account all issues of interest to less-developed contracting parties.

PART II
NEGOTIATIONS ON TRADE IN SERVICES

Ministers also decide, as part of the Multilateral Trade Negotiations, to launch negotiations on trade in services.

Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations.

GATT procedures and practices shall apply to these negotiations. A Group of Negotiations on Services is established to deal with these matters. Participation in the negotiations under this Part of the Declaration will be open to the same countries as under Part I. GATT secretariat support will be provided, with technical support from other organizations as decided by the Group of Negotiations on Services.

The Group of Negotiations on Services shall report to the Trade Negotiations Committee.

IMPLEMENTATION OF RESULTS UNDER PARTS I AND II

When the results of the Multilateral Trade Negotiations in all areas have been established, Ministers meeting also on the occasion of a Special Session of CONTRACTING PARTIES shall decide regarding the international implementation of the respective results.

GENERAL AGREEMENT ON
TARIFFS AND TRADE

MIN.DEC/Chair
20 September 1986

STATEMENT BY THE CHAIRMAN
(AND ADOPTION OF THE MINISTERIAL DECLARATION)

Before proposing adoption of the Ministerial Declaration on the Uruguay Round, the CHAIRMAN noted that the purpose of the Declaration was to launch multilateral trade negotiations on goods and services. This involved taking three decisions: the first would be to adopt, as the CONTRACTING PARTIES, Part I of the Declaration, relating to negotiations on trade in goods; the second would be to adopt Part II, on trade in services, as representatives of Governments meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este; thirdly, again as representatives of Governments meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este, to adopt the Declaration as a whole.

He then made the following specific points:

Representatives of certain governments had expressed concern regarding a number of problems relating, in particular, to commodities, natural resource-based products and tropical products. Those governments were concerned that solutions to their problems be found and implemented quickly. Specific proposals had been put forward by certain African governments in MIN(86)/W/18. While he was sure that this conference attached great importance to those concerns, it had not been possible to complete consideration of the proposals at the conference. It had, therefore, been agreed that the proposals would be considered by the Trade Negotiations Committee foreseen in the Declaration.

In order to participate fully in the negotiations, developing countries would require technical support. There was agreement that technical support by the Secretariat, adequately strengthened, should be available to developing countries participating in the negotiations.

Some governments had expressed concern over trade measures applied for non-economic reasons.

He then summarized discussions that had taken place on the objectives of the negotiations:

- There had been a proposal to include, among the objectives of the negotiations, that of redressing growing disequilibria in world trade and of achieving, in the spirit of the Preamble to the General Agreement, a greater mutuality of interests.

- However, it had been represented that the foregoing proposal might lead to a trading system incompatible with the basic objectives and principles of GATT, the guarantor of the open and non-discriminatory trading system.

- Nevertheless, it was common ground that growing disequilibria in world trade constituted a serious problem and would need to be tackled by the countries concerned by various policy means including macro-economic policy, exchange rates, structural reform and trade policy.

- It was furthermore agreed that in the negotiations every contracting party should make genuine efforts to ensure mutual advantages and increased benefits to all participants, in accordance with the principles of the GATT.

Some proposals had been received regarding the setting up of negotiating groups for the negotiations. These proposals would be formally circulated after the Session.

He noted that there were certain issues raised by delegations on which a consensus to negotiate could not be reached at this time. These issues included the export of hazardous substances, commodity arrangements, restrictive business practices and workers' rights.

He then clarified that it was understood that paragraph F(b) was interpreted as meaning that (a) all participants in the multilateral trade negotiations have the right to participate in all negotiations on all issues and that (b) non-contracting parties shall only be precluded from participation in decisions of contracting parties relating to the results of these negotiations.

The conference had noted requests by certain governments, not at present covered by the provisions in the Declaration on participation, to take part in the multilateral trade negotiations. The Director-General was authorized, upon request by such governments, to keep them informed of progress in the negotiations.

No delegation present would see in the Declaration all the points that it wished to be included when this meeting had opened. Many of the specific concerns of delegations would have to be pursued in the negotiations themselves, and this was as it should be.

The CONTRACTING PARTIES adopted Part 1 of the Declaration.

Delegations made statements.[*]

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[*] Reflected in the Summary Records.

The CHAIRMAN then addressed participants as representatives of Governments meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este.

He stated that a number of the agreed points that he had read out before the adoption of Part I of the Declaration also applied to Part II.

The representatives of Governments meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este adopted Part II of the Declaration.

These representatives then adopted the Declaration as a whole as a single political undertaking launching the Uruguay Round.

Delegations made statements.*

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*Reflected in the Summary Records.

PRESS / COMMUNIQUÉ
RELEASE DE PRESSE

GENERAL AGREEMENT ON TARIFFS AND TRADE
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

CENTRE WILLIAM-RAPPARD, 154, RUE DE LAUSANNE, 1211 GENÈVE 21, TÉL. 022 31 02 31

GATT/1406
10 February 1987

URUGUAY ROUND - NEGOTIATING GROUPS

The following were agreed today as chairmen of the 14 negotiating groups charged with fulfilling the mandates in Part One (Trade in Goods) of the Punta del Este Declaration which launched the Uruguay Round. The Chairman of the Surveillance Body was also agreed.

1. Tariffs 2. Non-Tariff Measures 3. Natural Resource-Based Products 4. Textiles and Clothing	Mr. Lindsay Duthie (Australia) Ambassador and Australian Special Trade Representative, Europe
5. Agriculture	Mr. Aart de Zeeuw (EC/Netherlands) Director-General of Agriculture, The Netherlands
6. Tropical Products	Mr. Paul Leong Khee Seong (Malaysia) M.P., Former Minister of Primary Industries, Malaysia Vice-Chairman: Mr. Siaka Coulibaly (Côte d'Ivoire) Ambassador, Advisor to the Minister of Foreign Affairs, Côte d'Ivoire
7. GATT Articles 8. MTN Agreements and Arrangements	Mr. John M. Weekes (Canada) Director-General of Trade Policy, Department of External Affairs, Canada Dr. Chulsu Kim (Korea) Assistant Minister of Trade, Ministry of Trade and Industry, Republic of Korea
9. Safeguards	Mr. Georges A. Maciel (Brazil) Ambassador, Permanent Representative of Brazil to the United Nations, New York

MORE

INFORMATION

GENERAL AGREEMENT ON TARIFFS AND TRADE
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

CENTRE WILLIAM-RAPPARD, 154, RUE DE LAUSANNE, 1211 GENÈVE 21. TÉL. 022 31 02 31

GATT/1405
5 February 1987

THE URUGUAY ROUND - DECISIONS OF 28 JANUARY 1987

The negotiating structure and the negotiating plans for all the issues affecting trade in goods outlined by Ministers at the Punta del Este meeting in September were agreed on 28 January in Geneva. The programme for the initial phase of the negotiations on trade in services agreed on at Punta del Este was likewise adopted. Also agreed, was the nature of the surveillance mechanism which will oversee the 'standstill' and 'rollback' commitments contained in the Punta del Este Declaration.

With these decisions, the mechanisms and procedures to carry forward the negotiations have been put in place.

The Group of Negotiations on Goods (GNG), the Group of Negotiations on Services (GNS) and the Trade Negotiations Committee (TNC), which oversees the conduct of the Uruguay Round, met on 28 January 1987. The TNC took the decision on the mechanism for the surveillance of standstill and rollback and took note of decisions reached by the GNG and GNS. The decisions were as follows:

1. Mechanism for the Surveillance of Standstill and Rollback

- A decision by the TNC, based upon a recommendation from the GNG, on the establishment of a mechanism for the surveillance of the standstill and rollback commitments in the Ministerial Declaration on the Uruguay Round. (Annex 1, page 4)

ANNEX 1

SURVEILLANCE OF STANDSTILL AND ROLLBACK

Standstill

1. Any participant may bring to the attention of a Surveillance Body, open to all participants, through the GATT secretariat, any action or measure, taken by itself or another participant, which it believes relevant to the fulfilment of the standstill commitments. Any such notification will be deemed to have been submitted to the Surveillance Body upon its receipt by the secretariat.

2. The secretariat shall circulate promptly to all participants, and in no case later than 10 working days after receipt, a copy of all notifications addressed to the Surveillance Body. When notifications relate to actions by other participants (reverse notifications) the secretariat shall promptly inform the country to which they relate. Any comments[1] and any other relevant factual material received within the above period of 10 working days will be circulated together with the notification. If any comments or further information become available subsequently they will be circulated promptly.

3. The Surveillance Body will examine the relationship between the actions or measures notified and paragraphs (i), (ii) and (iii) of the standstill commitment contained in Section C of Part I of the Ministerial Declaration at its first meeting following the 10 working day period referred to in paragraph 2 above. The Surveillance Body will transmit a record of its proceedings to the next meeting of the TNC. (This record will be transmitted to the GNG for its information.)

Rollback

4. Any participant may bring to the attention of other participants, through the GATT secretariat, measures which it is applying or measures applied by another participant, which it believes should be subject to the rollback commitment. It will be open to any participant to notify to the Surveillance Body any omission by another participant which it believes to be relevant to the fulfilment of the rollback commitment.

5. Participants concerned shall consult in order to arrive at rollback undertakings. Timely notice of such consultations shall be sent to the secretariat for the information of all participants so that any affected participants may also take part in consultations if they so wish. Participants shall notify any undertakings resulting from these consultations to the Surveillance Body.

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[1] The absence of comments by a country subject to a reverse notification shall not be deemed to constitute an admission that the measure is subject to the standstill commitment.

ANNEX 1a

Statements by the Chairman of the TNC related to surveillance of standstill and rollback

(i) With reference to paragraph 5:

"It is my understanding that participants maintaining measures that may be subject to the rollback commitment shall inform the Surveillance Body by 31 December 1987 of rollback undertakings resulting from the first round of consultations under paragraph 5."

(ii) With reference to paragraph 7:

"It is the understanding of the Chairman that the relevant GATT practice is the one followed by the GATT Council. The Council meets at periodic intervals, but if a contracting party considers that a matter cannot wait for the next regular meeting of the Council and requires urgent consideration, it may request a meeting for this purpose. When such requests have been made, they have normally been met, once the Chairman has consulted with interested parties."

(iii) Date of first meeting:

"It is the understanding of the Chairman that the first meeting of the Surveillance Body will take place in the week beginning 23 February 1987."

ANNEX 2a

Statement by the Chairman of the GNG related to the decision on the negotiating structure

"It is my understanding that the Decision on the Negotiating Structure has been adopted on the basis of the following understanding:

1. Meetings of the Negotiating Groups will be arranged in the year 1987 on the calendar pattern set out in the Decision on the Negotiating Structure.

2. Each of the 14 Negotiating Groups will have its own chairman and will operate as a separate entity.

3. It will be open to two or more Negotiating Groups to hold joint meetings if they so decide.

4. A given person may be appointed to the chairmanship of more than one Negotiating Group.

5. It is envisaged that, subject to agreement on the persons in question, the same individual may be appointed for the initial phase to the chairmanships of Negotiating Groups 1, 2, 3 and 4. The same approach would be considered for Groups 7 and 8 and for Groups 13 and 14.

6. A meeting of Heads of Delegation to the GNG, to be held before 9 February, will approve a list of persons to be appointed as chairmen of the Groups."

NON-TARIFF MEASURES

Negotiating Plan

Negotiating Objective

"Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions, without prejudice to any action to be taken in fulfilment of the rollback commitments."

Principal Stages of the Negotiating Process

Initial Phase

- A first examination of the issues to be covered, including the relationship between the negotiations in this area and other areas of the negotiations. Establishment of an adequate data base for negotiation. Participants would also present proposals setting out the particular problems that they want to address and the techniques which they consider should be used to deal with them (bilateral, plurilateral or multilateral). Paper by the secretariat on the data base and relevant work already undertaken in the GATT on techniques for negotiating on quantitative restrictions and other non-tariff measures.

- The proposals by participants would be examined with a view to reaching a common understanding on appropriate techniques and procedures (bilateral requests and offers, subject to procedures to ensure transparency; multilateral approaches) and on subjects to be dealt with multilaterally.

Subsequent Negotiating Process

- Tabling of detailed requests for bilateral or plurilateral negotiations on specific measures and of specific texts relating to any issues to be dealt with multilaterally.

- Negotiations will proceed on the common basis.

NATURAL RESOURCE-BASED PRODUCTS

Negotiating Plan

Negotiating Objective

"Negotiations shall aim to achieve the fullest liberalization of trade in natural resource-based products including in their processed and semi-processed forms. The negotiations shall aim to reduce or eliminate tariff and non-tariff measures, including tariff escalation."

Principal Stages of the Negotiating Process

Initial Phase

- Determination of issues relevant to the Negotiating Objective taking into account documentation established by the Working Party on Natural Resource-Based Products and proposals by participants.
- Establishment of a factual basis for negotiations.
- Elaboration of techniques and modalities for achieving the agreed objectives of negotiations in this area, taking into account those elaborated in other relevant areas.
- Establishment of a common negotiating basis.

Subsequent Negotiating Process

- Tabling of requests and offers.
- Negotiations will proceed on the common basis.

AGRICULTURE

Negotiating Plan

Negotiating Objective

"CONTRACTING PARTIES agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:

(i) improving market access through, inter alia, the reduction of import barriers;

(ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;

(iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.

In order to achieve the above objectives, the negotiating group having primary responsibility for all aspects of agriculture will use the Recommendations adopted by the CONTRACTING PARTIES at their Fortieth Session, which were developed in accordance with the GATT 1982 Ministerial Programme, and take account of the approaches suggested in the work of the Committee on Trade in Agriculture without prejudice to other alternatives that might achieve the objectives of the negotiations."

GATT ARTICLES

Negotiating Plan

Negotiating Objective

"Participants shall review existing GATT Articles, provisions and disciplines as requested by interested contracting parties, and, as appropriate, undertake negotiations."

Principal Stages of the Negotiating Process

Initial Phase

- Requests by interested contracting parties for review of GATT Articles, provisions and disciplines, indicating why they consider that these should be the subject of negotiations. Factual background papers by the secretariat on these Articles, provisions and disciplines. Review, following requests by participants, of GATT Articles, provisions and disciplines, with a view to determining issues on which negotiations are appropriate.

Subsequent Negotiating Process

- Tabling of specific texts by contracting parties on issues so identified for negotiation. Review and analysis of these proposals.

- Negotiations on the basis established.

MTN AGREEMENTS AND ARRANGEMENTS

Negotiating Plan

Negotiating Objective

"Negotiations shall aim to improve, clarify, or expand, as appropriate, Agreements and Arrangements negotiated in the Tokyo Round of Multilateral Negotiations."

Principal Stages of the Negotiating Process

Initial Phase

- Suggestions by participants indicating the issues that they wish to raise with respect to individual MTN Agreements and Arrangements. Factual background paper by the Secretariat on these issues. Examination of the proposals made by participants, with a view to clarifying issues on which negotiations are appropriate, having regard to work in the relevant Committees and Councils established under the MTN Agreements and Arrangements. In the light of the issues identified, agreement on the negotiating techniques and modalities for the subsequent stages.

Subsequent Negotiating Process

- Submission of specific texts by interested participants on issues identified for negotiation. Review and analysis of the proposals.

- Negotiations on the basis established.

DISPUTE SETTLEMENT

Negotiating Plan

Negotiating Objective

"In order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and the procedures of the dispute settlement process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations."

Principal Stages of the Negotiating Process

Initial Phase

- Submission by participants of their analyses of the functioning of the GATT dispute settlement process and of their views on matters to be taken up in the negotiations. Factual background papers by the Secretariat as required. Review of the dispute settlement process with a view to identifying issues on which negotiations are appropriate.

- Tabling of specific proposals by participants on issues identified for negotiation.

Subsequent Negotiating Process

- Review and analysis of proposals.

- Negotiations on the basis established.

TRADE-RELATED INVESTMENT MEASURES

Negotiating Plan

Negotiating Objective

"Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade."

Principal Stages of the Negotiating Process

Initial Phase

- Identification and examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, on the basis of submissions by participants and with the assistance, as appropriate, of background documentation by the secretariat.

Subsequent Negotiating Process

- Definition of areas in which negotiations may be required to elaborate, as appropriate, further provisions that may be necessary to avoid restrictive and distorting effects of investment measures on trade, on the basis of proposals by participants.

- Negotiations on the basis established.

ANNEX 3a

Statement by the Chairman of the GNG related to the regotiating plans

"Wherever the words "Negotiating Objective" appear under the "Principal Stages of the Negotiating Process" of the Negotiating Plans, they refer to the entire text which appears under the heading "Negotiating Objective" at the beginning of each plan."

Schedule of meetings for 1987

There will be a total of twelve days of meetings in the first half of 1987.

Meeting dates	Agenda
23 - 25 February	General debate, elements
Following meetings	elements

MARCH 1987

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3 UR - GATT Articles Negotiating Group Meeting - Geneva	4	5	6 UR - MTN Agreements and Arrangements Negotiating Group Meeting - Geneva	7
8	9	10 UR - Safeguards Negotiating Group Meeting - Geneva	11	12	13	14
15	16 UR - Subsidies and Countervailing Measures Negotiating Group Meeting - Geneva	17	18	19	20	21
22 Trade Ministers Meeting - Taupo, New Zealand	23	24	25 UR - Intellectual Property and Counterfeit Negotiating Group Meeting - Geneva	26	27	28
29	30	31				

APRIL 1987

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2 UR - Investment Negotiating Group Meeting - Geneva	3	4
5	6 UR - Dispute Settlement Negotiating Group Meeting-Geneva	7 UR - Functioning of the GATT System Negotiating Group Meeting - Geneva	8 UR - Group of Negotiations on Services (GNS) Meeting - Geneva	9	10	11
12	13 UR - Group of Negotiations on Goods (GNG) Meeting - Geneva	14	15	16	17	18
19	20	21	22	23 OECD - TCWP Investment - Paris	24 Quadrilateral Trade Ministers Meeting - Japan	25
26 Quad (Con't)	27 UR - Tariffs Negotiating Group Meeting - Geneva	28 UR - Non-Tariff Measures Negotiating Group Meeting - Geneva	29 UR - Natural Resource Products and Textiles Negotiating Group Meetings - Geneva	30		

MAY 1987

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4 UR - Agriculture Negotiating Group Meeting - Geneva	5	6	7	8	9
10	11 UR -' Tropical Products Negotiating Group Meeting - Geneva	12 OECD Ministerial Meeting - Paris	13	14	15	16
17	18 UR - Negotiating Group on GATT Articles Meeting - Geneva	19	20	21 UR - Negotiating Group on MTN Agreements and Arrangements Meeting - Geneva	22	23
24 31	25 UR - Safeguards Negotiating Group Meeting - Geneva	26	27	28	29	30

JUNE 1987

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1 UR - Subsidies and Countervailing Measures Negotiating Group Meeting - Geneva	2	3	4	5	6
7	8 Economic Summit Meeting - Venice	9 UR - Intellectual Property Rights/Counterfeit Negotiating Group Meeting - Geneva	10	11	12	13
14	15 UR - Investment Negotiating Group Meeting - Geneva	16	17	18 UR - Standstill/Rollback Surveillance Body Meeting - Geneva	19	20
21	22 UR - Dispute Settlement and Functioning of the GATT System Negotiating Group Meetings - Geneva (Dates TBD)	23	24	25	26 UR - Goods Negotiating Group (GNG) Meeting - Geneva	27
28	29 UR - Services Negotiating Group (GNS) Meeting - Geneva UR - Negotiating Groups on Tariffs, Non-Tariff Measures, Natural Resource-Based Products and Textiles and Clothing Meetings (Date TBD) - Geneva	30	1	2	3	4

JULY 1987

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
28	29	30	1	2	3	4
5	6 UR - Agriculture Negotiating Group Meeting - Geneva	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Chairman Gibbons. Well, thank you very much.

Next we have the U.S. Customs Service, Michael H. Lane, Deputy Commissioner. Go right ahead, Mr. Lane.

STATEMENT OF HON. MICHAEL H. LANE, DEPUTY COMMISSIONER, U.S. CUSTOMS SERVICE, ACCOMPANIED BY WAYNE HAMILTON, ACTING COMPTROLLER; CHARLES WINWOOD, DEPUTY ASSISTANT COMMISSIONER, INSPECTION AND CONTROL; GERALD McMANUS, DEPUTY ASSISTANT COMMISSIONER, COMMERCIAL OPERATIONS; AND CHARLES BRISBIN, DEPUTY ASSISTANT COMMISSIONER, ENFORCEMENT

Mr. Lane. Thank you.

Chairman Gibbons. For the record, you ought to introduce all those fine folks you have with you.

Mr. Lane. On my right is the Acting Comptroller, Wayne Hamilton. On his right is Chuck Winwood, Deputy Assistant Commissioner for Inspection and Control. On my immediate left is Gerry McManus, Assistant Commissioner for Commercial Operations, and on his left Chuck Brisbin, Deputy Assistant Commissioner for Enforcement.

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the fiscal year 1988 budget request for the U.S. Customs Service. I request that my formal statement be made a part of the record.

Our request totals $803,090,000 for the salaries and expenses account; $86,210,000 for the operations and maintenance of the air program account; $10 million for the forfeiture funds; and $486,000 for the services at small airports.

It has been an active year for the U.S. Customs Service. We have deployed over 600 new personnel in the Southwest border, added new, more sophisticated aircraft to our air interdiction fleet, and intensified our cooperation with state and local law enforcement official. These actions will further contribute to our progress in the fight to stop illicit drug traffic.

We have also taken dramatic steps in commercial activities. Our efforts have concentrated on improvements in the processing of commercial traffic while intensifying enforcement efforts to detect narcotics, fraud, and quota violations. We have done this through expansion of the automated commercial system and development of selectivity systems which allow inspectors to concentrate on high-risk passengers and cargo while allowing legitimate transactions to receive minimal attention. We will continue our streamlining efforts in fiscal year 1988.

We believe that the new approaches in systems which we have pursued during the past year have paid off in a number of areas, and that we have a significant record of achievement that we can report to you.

These include the following: We have implemented three separate user fee initiatives as required by law. This includes the 0.22 percent ad valorem user fee, the COBRA user fee requiring a flat fee for processing passengers, trucks, trains and vessels, and the harbor maintenance fee which is designed to collect fees to support the cost of improving our waterways. We carried out this implementation with extensive interface and coordination with the trade community.

We have initiated a number of efforts to improve narcotics interdiction along the Southwest border. This has included developing ways to detect narcotics in containers, changing operational procedures as required to improve enforcement, requesting support of the business community in our drug enforcement campaign, and full participation in Operation Alliance, the administration's drug enforcement initiative on the Southwest border.

We have continued to improve the automation of merchandise processing into the United States with the implementation of a line release system on the Canadian border. Again, this was carried out with the close cooperation and assistance of the importing community. This system is now being implemented all across our northern border and represents a dramatic improvement in the processing of cargo entering the United States by truck.

We have implemented in a number of locations centralized examination stations which enable us to carry out both trade enforcement and narcotics enforcement activities with commercial cargo. These stations provide for improved use of our manpower, effective use of information, and a secure and safe environment for our inspectors to strip and/or examine containers.

We have begun to think creatively about changes we should make in our commercial side of the Customs Service. We refer to this project as "Day One." This involves thinking about how to carry out our mission as if we were starting a brand new Customs Services faced with the laws and work load we have today, but free to develop all new systems and procedures and with full access to the sophisticated technology available today. We anticipate that this creative approach will lead to a number of new ideas for carrying out our mission.

In all these areas, we have endeavored to work closely with the traveling and importing community, obtaining their input on proposed changes. While we have accomplished a great deal, we must acknowledge that many challenges remain. We processed an increased work load during the past year in the areas of formal entries, revenue collection, and airline passenger processing. We anticipate these work load activities to increase even further in the future.

We must do even better in interdicting narcotics crossing our borders. We must improve our effectiveness in detecting fraud, which manifests itself in many ways, including falsification of country-of-origin, evasion of quotas, and the use of counterfeit visas. We must be able to detect those violations which represent the most serious threats to our economic well-being and to the health and welfare of our nation.

I am confident that in our programs and systems we have laid the foundation for carrying out our mission. I look with pride on the fact that the U.S. Customs Service is directly contributing to many of our national priorities and concerns that deal with the problem of drugs and the economic performance and competitiveness of our nation.

We have long prided ourselves on being the Nation's border agency, capable of responding to ever-changing national priorities.

Mr. Chairman, there is much more I could say, but my formal written statement outlines these efforts in more detail. We would be pleased to answer any questions you may have.

[The prepared statement follows:]

STATEMENT OF

MICHAEL H. LANE

DEPUTY COMMISSIONER

U.S. CUSTOMS SERVICE

BEFORE THE
HOUSE WAYS AND MEANS
TRADE SUBCOMMITTEE

MAY 12, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO PRESENT THE U.S. CUSTOMS SERVICE FY 1988 APPROPRIATION REQUEST. WE ARE REQUESTING $803,090,000 AND 13,089 DIRECT AVERAGE POSITIONS FOR SALARIES AND EXPENSES AND $86,210,000 FOR OPERATIONS AND MAINTENANCE OF THE AIR PROGRAM. CUSTOMS IS ALSO REQUESTING AN APPROPRIATION OF $10,000,000 FOR THE FORFEITURE FUND AND $486,000 TO RECOVER ANTICIPATED REIMBURSEMENTS FOR SERVICES AT SMALL AIRPORTS.

CUSTOMS SALARIES AND EXPENSES FY 1988 APPROPRIATION REQUEST REPRESENTS A NET INCREASE OF $11,915,000 FROM THE REVISED FUNDING LEVEL PROPOSED TO CONGRESS FOR FY 1987.

MAJOR ACCOMPLISHMENTS

IN ITS CAPACITY AS A REVENUE COLLECTING AGENCY UNDER THE TARIFF CODE OF 1930, THE CUSTOMS SERVICE COLLECTED $14.7 BILLION IN FY 1986. THIS TOTAL IS PROJECTED TO REACH $15.3 BILLION IN FY 1988.

CUSTOMS CLEARED 301,496,000 PERSONS AND PROCESSED 7,320,000 MERCHANDISE ENTRIES IN FY 1986, UP 7.3%.

AMONG OTHER THINGS CUSTOMS ALSO SEIZED 52,521 POUNDS OF COCAINE, THIS NATION'S NUMBER ONE NARCOTICS THREAT AND 692 POUNDS OF HEROIN. CUSTOMS PARTICIPATED WITH OTHER AGENCIES IN SEIZING 2,211,068 POUNDS OF MARIJUANA AND 17,555 POUNDS OF HASHISH. EARLY THIS YEAR CUSTOMS SEIZED TWO CONTAINERS WITH 6,900 POUNDS OF COCAINE, THE LARGEST SINGLE SEIZURE OF COCAINE IN U.S. HISTORY.

THE KNOWLEDGE THAT CUSTOMS HAS IN THE PAST YEAR CARRIED OUT THESE MILLIONS OF TRANSACTIONS IS MEANINGLESS WITHOUT THE KNOWLEDGE OF HOW CUSTOMS IS IMPROVING THE WAY IT DOES BUSINESS. AS A RESULT OF A NUMBER OF INNOVATIONS AND MANAGERIAL IMPROVEMENTS EITHER INITIATED IN FY 1986 OR CARRIED OVER FROM ONE OF THE PREVIOUS FOUR YEARS, I BELIEVE CUSTOMS IS DOING A BETTER JOB. I HAVE ATTACHED FOR THE COMMITTEE'S BENEFIT A COPY OF "U.S. CUSTOMS SERVICE ACCOMPLISHMENTS 1982 THROUGH 1986.

FIRST, I WILL ADDRESS CUSTOMS DRUG INTERDICTION EFFORT. UNDER REORGANIZATION PLAN NUMBER 2 OF 1973, CUSTOMS IS THE PRIMARY NARCOTICS BORDER INTERDICTION AGENCY. THIS COUNTRY IS FACING THE THREAT OF ILLEGAL IMPORTATION OF BUMPER CROPS OF COCAINE, MARIJUANA AND HEROIN. CUSTOMS HAS BEEN RELYING ON COOPERATION WITH THE PRIVATE SECTOR AND OTHER LAW ENFORCEMENT AGENCIES AND SMARTER USE OF OUR AUTOMATED SYSTEMS TO PUT GREATER AND GREATER PRESSURE ON NARCO-TRAFFICKERS.

CUSTOMS NARCOTICS COOPERATIVE EFFORTS WITH THE PRIVATE SECTOR ARE ALSO CONTINUING TO EXPAND WITH THE ESTABLISHMENT OF THE 1-800-BE ALERT SMUGGLING HOTLINE IN COMMUNITIES ALONG THE ENTIRE SOUTHERN TIER OF THE UNITED STATES. ON THE SOUTHWEST BORDER, LOCAL TRADE GROUPS ARE NOW WORKING WITH US TO DETERMINE HOW THEY CAN MONITOR THEIR OWN TRANS UNITED STATES/MEXICAN BORDER COMMERCIAL TRAFFIC THEREBY PREVENTING UNAUTHORIZED AND ILLEGAL USE OF THOSE VEHICLES TO SMUGGLE NARCOTICS.

ANOTHER CUSTOMS COOPERATIVE NARCOTICS INTERDICTION EFFORT THAT IS EXPANDING INVOLVES COMMERCIAL AIR AND SEA CARRIERS. THE COMMERCIAL CONCEPT BEGAN WITH AIR CARRIERS IN 1983. SINCE 1984 U.S. CUSTOMS HAS ENTERED INTO MEMORANDUMS OF UNDERSTANDING WITH MORE THAN 40 COMMERCIAL AIR CARRIERS SERVING HIGH RISK NARCOTIC SOURCE OR IN-TRANSIT LOCATIONS. THIS PROGRAM HAS PREVENTED 1100 POUNDS OF COCAINE, 12,000 POUNDS OF MARIJUANA AND 8 POUNDS OF HEROIN FROM REACHING THE U.S. MARKET. THIS PROGRAM IS NOW BEING EXPANDED TO THE COMMERCIAL SEA CARRIER COMMUNITY. ALL PARTICIPANTS IN THIS PROGRAM RECEIVE NARCOTICS ENFORCEMENT TRAINING FROM CUSTOMS IN RETURN FOR THEIR COOPERATION.

CUSTOMS IS GAINING BETTER CONTROL OF HIGH THREAT AREAS IN OUR AIRPORTS. THE CUSTOMS AIRPORT SECURITY PROGRAM WAS INITIATED IN EARLY FY 1986. IT REQUIRES AIRLINES TO CHECK THE HISTORY OF ALL EMPLOYEES THAT HAVE ACCESS TO SECURE CUSTOMS AREAS IN OR AROUND AIRPORT BUILDINGS. UNTRUSTWORTHY BAGGAGE HANDLERS OR RAMP SUPERVISORS NOW RUN A MUCH GREATER RISK OF BEING APPREHENDED AND DISMISSED IF THEY COOPERATE WITH NARCOTICS SMUGGLERS.

CUSTOMS TACTICAL NARCOTICS ENFORCEMENT

AIR PROGRAM

CUSTOMS CURRENTLY HAS A FLEET OF 90 FIXED WING AND ROTARY AIRCRAFT IN USE TO DETECT, TRACK AND APPREHEND NARCOTICS SMUGGLERS USING PRIVATE AIRCRAFT. IN FY 1986, WITH FEWER SOPHISTICATED AIRCRAFT THAN ARE ON BOARD NOW, THE CUSTOMS AIR PROGRAM SEIZED 18,722 POUNDS OF COCAINE.

CUSTOMS AIR INTERDICTION PROGRAM RESOURCES HAVE GROWN CONSIDERABLY SINCE EARLY 1984. OPERATIONS AND MAINTENANCE FUNDING HAS INCREASED SINCE THAT TIME FROM $31 MILLION APPROPRIATED IN FY 84 TO $170.9 MILLION IN FY 87. WE HAVE ALSO ADDED THE FOLLOWING RESOURCES SINCE 1984:

	4	CESSNA CITATION II
*	3	CESSNA CITATION II
	4	P-3A ORIONS
	2	E-2C HAWKEYES
	10	BLACKHAWK HELICOPTERS
	8	PIPER CHEYENNES
	1	AEROSTAT
	6	C-12

* PRESENTLY UNDERGOING MODIFICATION

AS YOU KNOW, AIR SMUGGLERS ARE USING INCREASINGLY MORE SOPHISTICATED EQUIPMENT. IN BATTLING THESE CRIMINALS, CUSTOMS IS NOW DEPLOYING ITS HIGH PERFORMANCE, FULLY SENSORED HIGH SPEED INTERCEPTORS, HELICOPTERS AND AIRBORNE RADAR PLATFORMS, AND EIGHT NEW CUSTOMS HIGH ENDURANCE TRACKERS (CHETS). CUSTOMS ANTICIPATES DEPLOYING A NUMBER OF MODIFIED C-12 MILITARY AIRCRAFT TO BE UTILIZED AS TRACKER/INTERCEPTOR ASSETS. AN INTEGRATED LOGISTICS SYSTEM, WHICH PROVIDES COST EFFECTIVE MANAGEMENT OF CUSTOMS INCREASING AVIATION RESOURCES, IS BEING IMPLEMENTED. CUSTOMS DETECTION CAPABILITIES WERE FURTHER ENHANCED ON APRIL 15, 1987, WHEN TWO CUSTOMS E2-C'S WITH 360 DEGREE LOOK DOWN RADAR WERE DEPLOYED IN AN OPERATIONAL TRAINING MODE OVER THE SOUTHWEST BORDER. THE TWO E2-C'S PROVIDED IN THE 1986 DRUG BILL GIVE CUSTOMS THE ABILITY TO FLY SUSTAINED MISSIONS ON THE SOUTHERN BORDER AND OVER THE GULF OF MEXICO. THESE MISSIONS WILL IMPROVE OUR ABILITY TO DETECT SMUGGLING AIRCRAFT. THESE AIRCRAFT IN ADDITION TO THE PLACEMENT OF THE AEROSTATS IN THE COMING YEARS, WILL GIVE CUSTOMS THE ABILITY TO MAKE A LARGE IMPACT ON ILLICIT NARCOTICS TRADE.

BASED ON THE SUCCESSFUL STRATEGY APPLIED IN THE SOUTHEAST, WE PLAN TO ESTABLISH AIR MODULES ALONG THE ENTIRE BORDER. THE BASIC PREMISE OF THE AIR MODULES IS TO PROVIDE CUSTOMS WITH THE INTEGRAL ABILITY TO DETECT, INTERCEPT, TRACK AND APPREHEND THE AIR SMUGGLER.

A KEY ELEMENT OF OUR AIR PROGRAM OPERATIONS PLAN FOR FY 87 AND FY 88 IS A SUBSTANTIAL INCREASE IN AIR PROGRAM OPERATING HOURS. IN CRITICAL REGIONS, AIR PROGRAM OPERATING HOURS WILL INCREASE TO A 16 HOUR A DAY, 7 DAY WEEK SCHEDULE. IN FY 1987 AND 1988, CUSTOMS WILL CONTINUE TO OPERATE EXISTING RESOURCES AS WELL AS CHETS, AND E-2C RADAR DETECTION AIRCRAFT. CUSTOMS WILL ALSO INSTALL HF/SSB RADIOS IN VESSELS, AIRCRAFT, AND COMMAND CENTERS, AND PLACE VHF REPEATERS ON AEROSTATS.

ULTIMATELY, THE OVERALL EFFECTIVENESS OF THE FULL AIR PROGRAM IS DEPENDENT ON THE COMMAND, COMMUNICATION, CONTROL AND INTELLIGENCE (C3I) SYSTEM AND THE DETECTION NETWORK OF AIRBORNE AND GROUND BASED RADARS. CUSTOMS BELIEVES THAT THE CONTINUED STRONG CENTRALIZED MANAGEMENT OF ASSETS AND THE INCREMENTAL BUILDUP OF CURRENTLY PLANNED C3I CENTERS WILL RESULT IN OPTIMAL EFFECTIVENESS OF CUSTOMS RESPONSE TO THE SHIFTING AND INCREASING SMUGGLING THREAT.

IN ORDER TO PROVIDE REAL-TIME OPERATIONAL COORDINATION BETWEEN THE DETECTION, TRACKING AND APPREHENSION COMPONENTS OF CUSTOMS AIR MODULES, CUSTOMS IS ANTICIPATING THE AVAILABILITY OF C3I CENTERS AT THREE STRATEGIC LOCATIONS. THESE FACILITIES WILL ENABLE CUSTOMS TO BETTER CONTROL ITS ASSETS AND COORDINATE INTERDICTION EFFORTS WITH OTHER FEDERAL, STATE AND LOCAL AUTHORITIES.

MARINE

CUSTOMS HAS RECENTLY PLACED A GREATER EMPHASIS ON THE IMPORTANCE OF INFORMATION GATHERING AND THE USE OF TACTICAL INTELLIGENCE IN THE MARINE INTERDICTION PROCESS. IN LIGHT OF THIS, THE MODULE CONCEPT AS ORIGINALLY CONCEIVED HAS BEEN MINIMIZED IN MOST AREAS OF OPERATION. THE EQUIPMENT ORIGINALLY ASSIGNED TO THE MODULES (PLATFORMS) IS CURRENTLY BEING USED IN COVERT OPERATIONS AS OFF-LOAD VESSELS AND FOR UNDERCOVER MEETINGS. THEY ARE ALSO BEING USED AS RADAR PICKETS TO COVER GAPS IN THE EXISTING LAND BASED RADAR NET. IN THE SOUTHEAST REGION THE VESSELS ARE PROVIDING MARINE SUPPORT TO THE BAHAMIAN INITIATIVE.

SINCE JANUARY, 1986, THE MARINE PROGRAM HAS ACQUIRED THE FOLLOWING ADDITIONAL RESOURCES: 44 INTERCEPTOR VESSELS, 23 UTILITY VESSELS AND 3 RADAR PLATFORMS. WE ARE NOW IN THE PROCESS OF ACQUIRING 22 ADDITIONAL VESSELS WITH FUNDS PROVIDED IN THE DRUG BILL. IN ADDITION, COMMUNICATION AND SENSOR EQUIPMENT HAS BEEN LOANED TO STATE AND LOCAL ENFORCEMENT AGENCIES FOR SUPPORTING OPERATIONS. CURRENTLY, NEARLY 400 RADIOS HAVE BEEN ASSIGNED TO STATE AND LOCAL GROUPS. CUSTOMS COOPERATION WITH STATE AND LOCAL AUTHORITIES HAVE BEEN ENHANCED IN THE PAST TWO YEARS THROUGH TWO OPERATIONS: "BLUE LIGHTNING'" IN FLORIDA AND THE GULF COAST AND "BLUE FIRE" ON THE SOUTHWEST BORDER. THESE OPERATIONS HAVE BROUGHT TOGETHER RESOURCES OF THE CUSTOMS SERVICE AND THE STATE AND LOCAL AUTHORITIES THROUGHOUT THE SOUTHERN U.S. TO COMBAT ILLICIT IMPORTATION OF NARCOTICS.

CUSTOMS HAS NOW BEGUN TO USE ITS TACTICAL MARINE UNITS TO MONITOR COMMERCIAL AND PRIVATE VESSEL ACTIVITY INTO MAJOR SEAPORTS. TO FURTHER INCREASE MARINE TARGET DETECTION CAPABILITIES, CUSTOMS HAS INSTALLED ROOFTOP RADAR UNITS IN INLETS AND ALONG COASTAL AREAS.

COMMERCIAL OPERATIONS

ONE OF THE RESULTS OF CUSTOMS ENHANCED TACTICAL INTERDICTION CAPABILITIES IS THE SMUGGLER'S TEMPTATION TO ATTEMPT ENTRY OF HIS CONTRABAND THROUGH ESTABLISHED PORTS OF ENTRY. IN ORDER TO MEET THE SUBSTANTIAL NARCOTICS SMUGGLING THREAT AT THESE LOCATIONS CUSTOMS HAS HAD TO DEVELOP AUTOMATED SYSTEMS AND NEW WAYS OF PROCESSING PASSENGERS AND CARGO. THESE CHANGES IN THE WAY CUSTOMS OPERATES ARE INDISPENSABLE IF EFFECTIVE ENFORCEMENT OF CUSTOMS AND RELATED LAWS IS TO BE RECONCILED WITH EFFICIENT MOVEMENT OF PEOPLE AND CARGO.

AT THE HEART OF THE CUSTOMS COMMERCIAL PROCESSING REFORMS IS THE RAPID DEVELOPMENT OF THE AUTOMATED COMMERCIAL SYSTEM (ACS). TODAY, AT NUMEROUS PORTS, WE HAVE ON-LINE A COMPREHENSIVE DATA BASE WITH ALL THE FUNCTIONS REQUIRED FOR PROCESSING ELECTRONICALLY TRANSMITTED OR MANUALLY PREPARED ENTRIES. THE SYSTEM CAN EFFICIENTLY PROCESS ANY AND ALL ENTRIES PREPARED BY BROKERS. ALL REVENUE COLLECTED BY CUSTOMS IS PROCESSED THROUGH ACS, AS IS THE PREPARATION OF A DAILY BROKER STATEMENT. THE SYSTEM IS ALSO INTEGRATED INTO THE ELECTRONIC OPERATIONS OF LOCAL PORT AUTHORITIES AND MAJOR IMPORTERS.

ALL TOLD, ACS IS COMPRISED OF TWENTY PRIMARY MODULES. WHEN FULLY DEVELOPED, THIS SYSTEM WILL PROVIDE MUCH IMPROVED MANAGEMENT INFORMATION, BETTER TRADE STATISTICS, SIGNIFICANT CARGO PROCESSING EFFICIENCIES, AND INCREASED RESPONSIVENESS TO THE BUSINESS COMMUNITY.

ONE OF THE KEY ACS MODULES IS CALLED AUTOMATED BROKER INTERFACE OR ABI. CUSTOMS USES ABI TO PROCESS 30% OF ALL COMMERCIAL ENTRIES WHICH TOTALED 7.5 MILLION DURING 1986. ABI IS EXPECTED TO HANDLE 50% OF ALL ENTRIES BY 1988. SPEEDY ELECTRONIC HANDLING OF ENTRIES, REVENUE COLLECTIONS AND ENTRY LIQUIDATIONS ENABLE CUSTOMS TO PERFORM ITS MISSION WITH FEWER PERSONNEL.

ANOTHER ACS MODULE THAT IS HAVING A MAJOR ENFORCEMENT IMPACT ON CARGO PROCESSING IS ACS SELECTIVITY. THE SELECTIVITY MODULE IS AN ON-LINE SOPHISTICATED HISTORICAL DATA BASE WHICH HOLDS SUCH INFORMATION AS THE IMPORTER'S PAST RECORD WITH CUSTOMS, THE THREAT POTENTIAL OF PARTICULAR COMMODITIES, AND COUNTRY OF ORIGIN. INSPECTORS NOW DRAW CARGO INSPECTION RECOMMENDATIONS FROM ACS SELECTIVITY AS WELL AS THEIR OWN EXPERIENCE. IT SHOULD BE NOTED THAT ANY CUSTOMS INSPECTOR CAN OVERRIDE A SELECTIVITY RECOMMENDATION FOR A GENERAL OR CURSORY INSPECTION ON HIS OWN ACCORD. HOWEVER, OVERRIDE OF A SELECTIVITY RECOMMENDATION FOR AN INTENSIVE EXAMINATION REQUIRES THE APPROVAL OF THE INSPECTOR'S SUPERVISOR. FINALLY, SELECTIVITY INCORPORATES A RANDOM SAMPLE INSPECTION ELEMENT TO KEEP HISTORICALLY CLEAN SHIPPERS HONEST.

A QUOTA CONTROL WHICH IS OF PARAMOUNT INTEREST TO IMPORTERS HAS NOW BEEN INTEGRATED WITH ACS. THIS IMPROVES CUSTOMS CONTROL OVER QUOTA MERCHANDISE, IN PARTICULAR, THE ABILITY TO RESPOND QUICKLY TO CHANGING QUOTA REQUIREMENTS.

A CENSUS INTERFACE IS NOW OPERATIONAL IN ACS. DURING THE FIRST WEEK OF APRIL, THIS INTERFACE WILL TRANSMIT ELECTRONICALLY TO CENSUS ALL OF THE IMPORT LINE ITEM DATA THAT IS PROCESSED THROUGH ABI. THIS PROGRAM BENEFITS CUSTOMS AND THE BUREAU OF CENSUS BY PROVIDING MORE ACCURATE AND TIMELY TRADE STATISTICS AT LESS COST TO THE GOVERNMENT. BROKERS AND IMPORTERS BENEFIT IN THAT THEY DO NOT NEED TO PROVIDE AN ADDITIONAL COPY OF THE ENTRY SUMMARY DOCUMENT FOR STATISTICAL PURPOSES. SINCE STATISTICAL ERRORS ARE DETECTED "UP FRONT", CENSUS, CUSTOMS AND THE BROKERS AND IMPORTERS ALL BENEFIT FROM NOT HAVING TO REPROCESS ENTRIES THAT HAVE ERRORS.

A COMPLETE AND ACCURATE TARIFF RATE IS AN INTEGRAL PART OF ACS. THIS INFORMATION IS AVAILABLE TO THE TRADE COMMUNITY AND IS BEING UTILIZED BY OVER 100 USERS.

A FINES, PENALTIES, AND FORFEITURES MODULE IS IN PLACE WHICH IMPROVES CUSTOMS CONTROL OF THIS SOURCE OF GOVERNMENT INCOME.

A KEY TO ACS IS THE AUTOMATED MANIFEST SYSTEM WHICH ELECTRONICALLY COLLECTS MANIFEST DATA FROM IMPORTING CARRIERS. THIS IS THE INVENTORY OF SHIPMENTS THAT CUSTOMS CONTROLS. THIS IS FULLY OPERATIONAL IN NORFOLK AND LONG BEACH. WE ANTICIPATE COLLECTION OF 40% OF ALL IMPORTED SEA CARGO THROUGH THE PORT OF NEW YORK IN APRIL OF THIS YEAR.

AN EXPANSION OF THE LINE RELEASE SYSTEMS IS PLANNED FOR 1987 AND 1988. THIS SYSTEM, AT BOTH THE NORTHERN AND SOUTHERN BORDERS, ALLOWS CUSTOMS AND AUTOMATED BROKERS AND IMPORTERS TO PRE-DETERMINE ROUTINE, LOW RISK SHIPMENTS FOR IMMEDIATE RELEASE, THUS EXPEDITING THE MOVEMENT OF CARGO, WHILE AT THE SAME TIME, ENSURING INCREASED CUSTOMS CONTROL. THIS SYSTEM RECORDS THE SPECIFIC DETAILS OF IMPORTS ARRIVING IN THE U.S. THROUGH THE USE OF BAR CODES. THE PROCESS IS VERY SIMILAR TO HOW GROCERY PRICES ARE RECORDED AT THE SUPERMARKET. THIS IMPROVES THE SPEED AND ACCURACY OF CARGO RELEASE.

CURRENTLY, THE DAILY SHIPMENT FEATURE OF THE AUTOMATED BROKER INTERFACE PROVIDES FOR A "SINGLE CHECK" PAYMENT OF A DAILY BATCH OF ENTRY SUMMARY PACKAGES WHICH IS PRESENTED TO CUSTOMS UP TO 10 DAYS AFTER THE CARGO RELEASE DATE. AN ADDITIONAL CAPABILITY HAS BEEN DEVELOPED TO PROVIDE FOR A "PERIODIC PAYMENT" PROCEDURE FOR ENTRY SUMMARIES TRANSMITTED THROUGH ABI. THIS CONCEPT HAS BEEN DESCRIBED AS BEING COMPARABLE TO A REVOLVING

CHARGE ACCOUNT WHEREBY CHARGES AND CREDITS ARE APPLIED TO A CUSTOMER'S ACCOUNT AND THEN PAID ON A PERIODIC BASIS WITH INTEREST. THIS PROPOSED FEATURE HAS RECENTLY BEEN PUBLISHED IN THE FEDERAL REGISTER FOR TRADE COMMENT, WITH IMPLEMENTATION TO FOLLOW. PERIODIC PAYMENT WILL FURTHER ENHANCE THE COLLECTION PROCESS, AND AT THE SAME TIME, BENEFIT BOTH CUSTOMS AND THE TRADE BY ELIMINATING REDUNDANT FUNCTIONS AND REDUCING BOOKKEEPING COSTS.

CUSTOMS IS ALSO CONTINUING WITH THE OVERHAUL OF THE TREASURY ENFORCEMENT COMMUNICATIONS SYSTEM (TECS). THIS SYSTEM, WHICH PRE-DATES ACS, INCLUDES A COMPREHENSIVE ENFORCEMENT DATA BASE SYSTEM AND STATE-OF-THE-ART HARDWARE, SOFTWARE AND DATA MANAGEMENT SYSTEMS. THIS SYSTEM WILL SOON BE LINKED TO OTHER ACS MODULES, THEREBY PROVIDING FOR THE EXPANSION AND INTEGRATION OF THE EXISTING AUTOMATED ENFORCEMENT EFFORTS SUCH AS OPERATION EXODUS, THE TREASURY FINANCIAL LAW ENFORCEMENT SYSTEMS AND COMMERCIAL FRAUD, AS WELL AS OTHER ENFORCEMENT EFFORTS. TO SUMMARIZE, THE ADMINISTRATION'S REQUEST EMPHASIZES THE FURTHER ACQUISITION AND USE OF HIGH TECHNOLOGY AND OTHER AUTOMATED PROCESSES, RATHER THAN PERSONNEL INTENSIVE APPROACHES.

COMMERCIAL OPERATIONS FUNDING

A MAJOR BUDGETARY CHANGE FOR CUSTOMS COMMERCIAL OPERATIONS IS BEST ADDRESSED AT THIS JUNCTURE.

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (P.L. 99-509) ESTABLISHED AN AD VALOREM FEE BASED ON THE VALUE OF IMPORTED MERCHANDISE. RECEIPTS COLLECTED FROM THIS FEE ARE TO BE DEPOSITED IN THE "U.S. CUSTOMS USER FEE ACCOUNT" AND, SUBJECT TO APPROPRIATION, WILL BE USED TO FUND COMMERCIAL OPERATIONS WITHIN THE CUSTOMS SERVICE.

IN THE FY 1988 BUDGET REQUEST FOR SALARIES AND EXPENSES, COMMERCIAL ACTIVITIES OF INSPECTION AND CONTROL, ALL OF TARIFF AND TRADE, AND THE COMMERCIAL FRAUD OPERATIONS OF INVESTIGATIONS HAVE BEEN CONSOLIDATED INTO THE COMMERCIAL OPERATIONS ACTIVITY. THIS PROGRAM INCLUDES 8,001 AVERAGE POSITIONS AND $499,198,000. THIS WILL NOT AFFECT THE PROGRAM DESCRIPTIONS AND JUSTIFICATIONS PRESENTED HERE.

CARGO PROCESSING USER FEE RECEIPTS HAVE BEEN COLLECTED IN FY 1987 SINCE DECEMBER 1, 1986. THE ADMINISTRATION HAS NOT PROPOSED AN APPROPRIATION FROM THESE USER FEES FOR CUSTOMS 1987 ACTIVITIES BECAUSE OF THE UNCERTAINTY OF OUR CURRENT RECEIPT ESTIMATES AND THE NEED TO HAVE A BALANCE AT THE START OF FY 88 FROM WHICH A FY 88 APPROPRIATION CAN BE MADE.

INSPECTION AND CONTROL: PASSENGER AND CARGO PROCESSING

CUSTOMS INSPECTORS MAKE UP THE LARGEST SINGLE GROUP OF THE CUSTOMS FIELD OFFICERS. INSPECTORS OFTEN OPERATE IN A VARIETY OF SETTINGS WITHIN ONE PORT AREA, SOMETIMES PROCESSING THEIR PASSENGERS DURING THE MORNING OR AFTERNOON AND HANDLING AIR OR SEA CARGO THE REMAINDER OF THE DAY. OTHERS WORK IN CONTRABAND ENFORCEMENT TEAMS OR AT LAND BORDER STATIONS. WHATEVER THEIR STATION, INSPECTORS AND THEIR SUPERVISORS ARE CONSTANTLY DEALING WITH A CONFLICT: THE PUBLIC'S DESIRE TO SEE CUSTOMS ENFORCE NARCOTICS AND COMMERCIAL FRAUD LAW WHILE AT THE SAME TIME FACILITATING SMOOTH PASSENGER AND CARGO FLOW.

MANAGERIAL AND TECHNICAL IMPROVEMENTS NOW IN THE INITIAL IMPLEMENTATION OR TESTING STAGES WILL INCREASE PASSENGER ENFORCEMENT EFFECTIVENESS WITHOUT INCREASING PASSENGER TIMES. SOME OF THESE ARE EXPANDED USE OF THE TREASURY ENFORCEMENT COMPUTER SYSTEM AND THE USE OF PASSPORT READERS. THE MORE FAR REACHING INSPECTION AND CONTROL CHANGES, HOWEVER, ARE IN THE AREA OF CARGO PROCESSING.

CARGO PROCESSING

PRIOR TO THE ADVENT OF AUTOMATION, CUSTOMS CARGO PROCESSING WAS STILL BEING DONE TODAY THE SAME WAY IT WAS DONE TWO HUNDRED YEARS AGO. WITH THE ADVENT OF RECORD HIGH VOLUMES OF COMMERCIAL

ENTRIES, IT WAS APPARENT THAT CUSTOMS MUST CHANGE ITS CARGO PROCESSING TECHNIQUES. AS MENTIONED EARLIER, CUSTOMS EXPANDED USE OF ACS CARGO SELECTIVITY AND FURTHER DEVELOPMENT OF OTHER ACS MODULES IS AT THE HEART OF PROCESSING REFORMS. THE OTHER MAJOR CHANGE INVOLVES THE USE OF STRINGENT SELECTIVITY CRITERIA TO CHOOSE WHICH COMMERCIAL SHIPMENTS SHOULD RECEIVE INTENSIVE EXAMINATIONS, AND CENTRALIZATION OF A NUMBER OF KEY CUSTOMS FUNCTIONS: THE REVIEW OF COMMERCIAL DOCUMENTS, DEVANNING OF SHIPPING CONTAINERS, AND THE EXAMINATION OF OTHER COMMERCIAL SHIPMENTS.

OVER THE YEARS, THERE HAS BEEN A RAPID INCREASE IN THE NUMBER OF CONTAINER FREIGHT STATIONS, BONDED WAREHOUSES, AND TRUCK AND RAIL TERMINALS RECEIVING BONDED FREIGHT. THE DEVANNING OF CONTAINERS AND THE EXAMINATION OF THIS CARGO HAS REQUIRED CUSTOMS INSPECTORS TO USE VALUABLE TIME TRAVELLING FROM SITE TO SITE WITHIN PORT LIMITS, MOREOVER, DEVANNING AND EXAMINATION FACILITIES AT THESE REMOTE SITES ARE OFTEN INADEQUATE. THIS TIME IS NOW GOING TO BE SPENT EXAMINING CARGO AND CLEARING MERCHANDISE.

CENTRALIZATION OF DOCUMENT REVIEW IS ANOTHER MAJOR CHANGE IN THE WAY CUSTOMS DOES BUSINESS THAT, WHEN FULLY IMPLEMENTED, WILL REDUCE AVERAGE CARGO PROCESSING TIMES.

ALTHOUGH ALL THE CARGO PROCESSING CHANGES DISCUSSED HAVE SO FAR BEEN APPLIED IN SELECTED SEAPORTS AND AIRPORTS, CUSTOMS PLANS TO ADAPT THESE TECHNIQUES NATIONWIDE AS QUICKLY AS POSSIBLE. CUSTOMS IS CONFIDENT THAT THE FINAL RESULT OF ALL THESE CHANGES WILL BE A MORE EFFICIENT AND EFFECTIVE USE OF CUSTOMS PERSONNEL, BETTER ENFORCEMENT RESULTS AND EVEN BETTER FACILITATION OF CARGO.

INVESTIGATIONS

WORKING CLOSELY WITH INSPECTORS, IMPORT SPECIALISTS, CUSTOMS AIR OFFICERS, AND CUSTOMS MARINE OFFICERS ARE SPECIAL AGENTS FROM THE OFFICE OF ENFORCEMENT. THE EMPHASIS ON ENFORCEMENT AT CUSTOMS HAS CAUSED SPECIAL AGENT NUMBERS TO INCREASE FROM 400 IN 1981 TO OVER 1,100 TODAY. CUSTOMS SPECIAL AGENTS INVESTIGATE AND BRING TO PROSECUTION CASES IN A VARIETY OF FIELDS. THE MOST PROMINENT OF WHICH ARE NARCOTICS IMPORTATION, BANK SECRECY ACT VIOLATIONS, COMMERCIAL FRAUD, PORNOGRAPHY IMPORTATION, ARMS AND CRITICAL TECHNOLOGY EXPORT CONTROL, AND ORGANIZED CRIME RELATED NARCOTICS SMUGGLING ACTIVITY. THE MAIN PROGRAMS ARE DESCRIBED BELOW. IN EACH PROGRAM, TARGETING DEPENDS HEAVILY UPON THE DEVELOPMENT AND COLLECTION OF INTELLIGENCE.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE (OCDETF)

CUSTOMS PARTICIPATES WITH OTHER FEDERAL LAW ENFORCEMENT AGENCIES IN 13 CORE CITY TASK FORCES IN THE ORGANIZED CRIME DRUG ENFORCEMENT PROGRAM. CUSTOMS ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE (OCDETF) INVESTIGATIONS TARGET DRUG SMUGGLING GROUPS ENGAGED IN MONEY LAUNDERING.

IN FY 1988, CUSTOMS PLANS TO CONTINUE WITH CURRENT RESOURCE COMMITMENTS TO THE PRESIDENTIAL ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES. THESE SPECIALIZED INVESTIGATIVE TASK FORCES WILL CONTINUE TO DISMANTLE LARGE-SCALE DRUG SMUGGLING ORGANIZATIONS. TO DATE, CUSTOMS OCDETF AGENTS HAVE ACHIEVED EXCELLENT RESULTS. IN FY 1986, CASES INVOLVING CUSTOMS PARTICIPATION RESULTED IN 1,277 INDICTMENTS, 1,042 ARRESTS, 753 CONVICTIONS, $107,000,000 IN U.S. CURRENCY AND PROPERTY SEIZURES, SEIZURES OF 3,966 KILOGRAMS OF COCAINE AND 103 KILOGRAMS OF HEROIN, AND $5,000,000 IN FINES ASSESSED.

FRAUD PROGRAM

FOR SEVERAL YEARS, CUSTOMS HAS EMPHASIZED ITS FRAUD EFFORTS AGAINST ILLEGAL OR UNAUTHORIZED STEEL, TEXTILE, AND CLOTHING IMPORTS, AS WELL AS DRAWBACK AND TRADEMARK AND COPYRIGHT VIOLATIONS. THESE EFFORTS HAVE PRODUCED RESULTS IN TERMS OF

PENALTY RECOVERIES AND PROSECUTION OF CRIMINALS. FY-87 IS RUNNING SIGNIFICANTLY AHEAD OF LAST YEAR'S TOTALS. THE FIRST SIX MONTHS OF FY-87 RESULTED IN 530 TEXTILE SEIZURES VALUED AT $37,000,000. TEXTILE FRAUD INVESTIGATIVE CASES AMOUNT FOR 33% OF ALL MAJOR FRAUD CASES TRACKED BY CUSTOMS HEADQUARTERS.

CUSTOMS IS WRAPPING UP ANOTHER MAJOR INVESTIGATION, "OPERATION BITTERSWEET", INVOLVING SUGAR DRAWBACKS. TO DATE, 46 INDICTMENTS HAVE BEEN OBTAINED, 30 ARRESTS MADE, 32 CRIMINAL CONVICTIONS OBTAINED YIELDING $372,000 IN CRIMINAL FINES AND $2,636,000 IN MONEY RECOVERED. IN ADDITION, CIVIL SETTLEMENTS ALREADY NEGOTIATED WILL YIELD MORE THAN $14,000,000. ANOTHER IMPORTANT CASE INVOLVES ORANGE JUICE IMPORTS.

AS NOTED IN PAST YEARS, CUSTOMS CONTINUES TO PLACE A SPECIAL EMPHASIS ON ALL STEEL, TEXTILE, AND WEARING APPAREL IMPORTS. SPECIAL FRAUD TASK FORCE OPERATIONS IN FY 1988 WILL CONTINUE TO DIRECT THEIR EFFORTS AGAINST ILLEGAL MERCHANDISE BEFORE IT ENTERS UNITED STATES COMMERCE. THE AUTOMATED COMMERCIAL SYSTEM (ACS) HAS GREATLY EXPANDED CUSTOMS COMMERCIAL INVESTIGATIVE CAPABILITY BY ENABLING CUSTOMS AGENTS AND IMPORT SPECIALISTS TO TARGET VIOLATORS BY CORRELATING COMMERCIAL, FINANCIAL AND ECONOMIC DATA WITHIN SELECTED "HIGH RISK" AREAS.

WITH DIRECTION AND ASSISTANCE FROM THE COMMERCIAL FRAUD COMMAND CENTER AT HEADQUARTERS, CUSTOMS PERSONNEL WILL CONTINUE TO PURSUE THOSE WHO PRESENT FALSE DOCUMENTS, USE COUNTERFEIT VISAS AND EXPORT LICENSES, USE THIRD COUNTRIES AS TRANSSHIPMENT POINTS, AND USE FALSE DESCRIPTIONS AND CLASSIFICATIONS.

FINANCIAL LAW ENFORCEMENT PROGRAM

CUSTOMS INVESTIGATIVE ATTACK ON NARCOTICS SMUGGLING ORGANIZATIONS USING PROVISIONS OF THE BANK SECRECY ACT HAS PAID EXCELLENT DIVIDENDS IN TERMS OF ITS IMPACT ON THE LARGEST SMUGGLING GROUPS OPERATING IN THIS COUNTRY. MULTI-AGENCY INVESTIGATIVE AND PROSECUTORIAL TEAMS, OPERATING UNDER THE LEADERSHIP OF LOCAL U.S. ATTORNEYS, ARE CURRENTLY ACTIVE IN MOST CITIES WITH A HISTORY OF LARGE-SCALE CURRENCY MOVEMENTS AND CITIES MOST ACTIVE IN DRUG TRAFFICKING.

OPERATION BUCKSTOP, A 1986 CUSTOMS NATIONAL OUTBOUND CURRENCY INTERDICTION PROGRAM RESULTED IN 162 SEIZURES TOTALLING IN EXCESS OF $42 MILLION.

CUSTOMS CONTRIBUTION TO THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE IN 1986 INCLUDES; 1,042 ARRESTS; $46 MILLION IN CURRENCY AND OVER $61 MILLION IN PROPERTY SEIZED.

OUR FINANCIAL ANALYSIS DIVISION (FAD) IS THE NATIONAL CLEARINGHOUSE FOR ALL FINANCIAL DATA. THE DIVISION ANALYZES THE FINANCIAL CHARACTERISTICS OF CRIMINAL MARKETS AND ASSISTS IN DEVELOPING USABLE STRATEGIES FOR EXPLOITING CRIMINAL FINANCIAL PRACTICES. THE FAD IS ALSO THE SOURCE OF INTELLIGENCE, BOTH DOMESTIC AND FOREIGN, DEVELOPED AND ADAPTED FOR THE INVESTIGATIVE FIELD UNITS. DURING FY 1986, FAD IDENTIFIED 1,091 INDIVIDUALS AND 366 COMPANIES SUSPECTED OF LAUNDERING $1.2 BILLION DOLLARS.

EXPORT ENFORCEMENT

CUSTOMS COMPREHENSIVE EXPORT PROGRAM -- CALLED EXODUS --HAS THREE MAJOR OBJECTIVES:

TO ENFORCE THE ARMS EXPORT CONTROL ACT (AECA) WHICH PROHIBITS THE EXPORT OF MUNITIONS LIST CONTROLLED ITEMS -- ARMS, MUNITIONS, WEAPONS SYSTEMS --WITHOUT STATE DEPARTMENT CLEARANCE.

TO ENFORCE THE EXPORT ADMINISTRATION ACT AMENDED OF 1985 (EAAA) TO PREVENT THE ILLEGAL EXPORT OF CRITICAL TECHNOLOGIES AND SENSITIVE EQUIPMENT TO FOREIGN COUNTRIES.

TO ENFORCE EMBARGOES AGAINST NICARAGUA, LIBYA, SOUTH AFRICA, NORTH KOREA, VIET NAM, CAMBODIA, CUBA, AND SYRIA, AS WELL AS A DEFACTO EMBARGO AGAINST IRAN.

IN CARRYING OUT THE EXODUS PROGRAM, CUSTOMS TARGETS ILLEGAL EXPORTS WHILE MINIMIZING THE IMPACT ON LEGITIMATE TRADE. THIS IS DONE THROUGH THE USE OF SPECIFICALLY TARGETED ENFORCEMENT OPERATIONS CONCENTRATING ON HIGHLY SELECTIVE CRITICAL EXPORTS, INCREASED FOREIGN INFORMATION, AND ADP GENERATED ANALYTICAL INTELLIGENCE. THE BASIC ELEMENTS OF THE EXPORT ENFORCEMENT PROGRAM ARE: INTERDICTION, INVESTIGATION, DOMESTIC AND INTERNATIONAL COOPERATION. COMBINED, THESE ELEMENTS PROVIDE NOT ONLY DETERRENCE, BUT ALSO A PROACTIVE INVESTIGATIVE APPROACH TO DETECT AND DISRUPT CRIMINAL EXPORT CONSPIRACIES. IN FY 1988, A WIDE RANGE OF EXPORT ENFORCEMENT INITIATIVES WILL BE CONTINUED: UNDERCOVER OPERATIONS, ENHANCED LIAISON WITH THE INTELLIGENCE COMMUNITY, INCREASED FOREIGN COOPERATION, AND, SUPPORT AND ASSISTANCE TO FOREIGN GOVERNMENTS IN THEIR OWN CONDUCT OF OPERATIONS DIRECTED AGAINST EXPORT VIOLATIONS.

SINCE PROGRAM INCEPTION ON OCTOBER 1, 1981, THROUGH FY 86, CUSTOMS EXODUS PROGRAM HAS BEEN RESPONSIBLE FOR OVER 5,220 SEIZURES VALUED AT OVER $350 MILLION, 726 ARRESTS, AND 490 CONVICTIONS. DURING FY 86 ALONE, THE PROGRAM RESULTED IN 802 SEIZURES OF MERCHANDISE VALUED AT $51.6 MILLION. THESE SEIZURES RESULTED FROM 1,062 DETENTIONS OF SUSPECT EXPORTS, RESULTING IN A HIGHLY FAVORABLE SEIZURE-TO-DETENTION RATIO OF 76%.

PORNOGRAPHY

THE PAST DECADE HAS SEEN SUBSTANTIAL GROWTH IN PORNOGRAPHY TRAFFICKING. BECAUSE IT IS A PROBLEM OF NATIONAL CONCERN, CUSTOMS HAS STEPPED UP THE LEVEL OF ITS ENFORCEMENT. WE ARE AGGRESSIVELY INVESTIGATING PORNOGRAPHY CASES, ESPECIALLY WHERE LARGE VOLUME DEALERS, ORGANIZED CRIME, OR CHILD PORNOGRAPHY ARE INVOLVED. SINCE PORNOGRAPHY IS SMUGGLED INTO THE UNITED STATES ACROSS INTERNATIONAL BORDERS, CUSTOMS HAS A VITAL ROLE IN CURBING THE IMPORTATION OF PORNOGRAPHIC MATERIALS AND SEEKING PROSECUTION OF VIOLATORS OF CUSTOMS AND RELATED PORNOGRAPHY LAWS. TO ACCOMPLISH THIS, CUSTOMS, TOGETHER WITH OTHER FEDERAL, STATE, LOCAL AND FOREIGN AUTHORITIES, IS WORKING TO STEM THE FLOW OF PORNOGRAPHY IMPORTATION FROM THE SOURCE COUNTRIES. AS A RESULT OF CUSTOMS INVESTIGATIVE EFFORTS, MANY CHILD PORNOGRAPHERS HAVE BEEN IDENTIFIED AND ARRESTED.

CONCLUSION

CUSTOMS IS A MULTI-MISSION AGENCY. IT BEARS THE TREMENDOUS RESPONSIBILITY OF THWARTING TRADE IN ILLICIT NARCOTICS WHILE AT THE SAME TIME FACILITATING LEGITIMATE INTERNATIONAL TRADE IN MERCHANDISE. CUSTOMS PLANS TO USE THE RESOURCES AT ITS DISPOSAL AND THE MANAGEMENT INNOVATIONS DISCUSSED TODAY TO RECONCILE THESE TWO SOMETIMES CONFLICTING GOALS.

THIS CONCLUDES MY INTRODUCTORY STATEMENT. WE ARE AVAILABLE TO DISCUSS THE DETAILS OF THE REQUEST AND ANSWER YOUR QUESTIONS AND THOSE OF THE SUBCOMMITTEE MEMBERS.

U.S. CUSTOMS SERVICE ACCOMPLISHMENTS 1982 — 1986

YOU CAN HELP!

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INTRODUCTION

In recent years, Customs has faced the challenge of meeting increasing workload demands during a period of constrained resources. Smuggling of narcotics and dangerous drugs into the United States had reached unprecedented levels. Domestic industries were facing increasing difficulties from unfair foreign competition. Our national security was being threatened by the illegal diversion of our own critical technology.

Customs has met these challenges, in the last 5 years, through improved management, innovation, technology, and a greater emphasis on selective enforcement which also facilitates the flow of cargo and passengers. Support functions have been streamlined so that Customs front line enforcement programs could be strengthened with additional staff, equipment, and other resources. Our enforcement efforts have been focused on the priority areas of narcotics interdiction, financial investigations, critical technology transfer, unfair trade practices, fraud and pornography. Basic processing systems have been modernized and frequently automated to become more efficient and provide quality service to the public.

As a result of major administrative initiatives for enhanced productivity and increased efficiency such as regional consolidation, administrative centralization, and other Headquarters efficiency efforts, Customs has been able to reallocate many positions to the operational and enforcement areas particularly in the field. Between 1982 and 1986, Customs reallocated 1,035 positions to create 256 Special Agents, 260 Inspectors, 348 Tactical Enforcement Officers, and 171 positions for enforcement support.

In recent years, Customs has incurred increasing workloads without corresponding staffing increases. For instance, cargo workload, which accounts for more than half of Customs staffing, rose by 55 percent in 5 years to 6.9 million formal entries in FY 1985. Air passenger processing, which is highly labor intensive, has increased by 19.5 percent in 6 years to 33.8 million passengers. In addition, new laws increased Customs responsibilities in the areas of child pornography, trade agreements act, export administration and wildlife protection. Customs has absorbed these increases through productivity improvements such as increased selectivity, automation, innovative processes, and an aggressive elimination of nonproductive activities.

The following sections entitled Enforcement, Commercial/Facilitation, and Management Improvements highlight some of the more notable achievements of Customs during the period of FY 1982-1986.

ENFORCEMENT

ENFORCEMENT INITIATIVES

The Administration's concerted effort and emphasis on law enforcement initiatives have demonstrated significant accomplishments. The successes of enforcement programs instituted prior to FY 1986 continue to be realized in the areas of fraud, financial, strategic, and narcotics investigations. In FY 1986 the Customs Service relentless commitment to the National Drug Enforcement Strategy continues unabated. The creation of the multiagency Southwest Border Narcotics Task Force and the joint Customs/DEA Narcotics Task Force at JFK Airport, New York, manifests this commitment. In addition, other enforcement programs designed to confront the narcotics threat, The Florida Joint Task Group and the President's Organized Crime Drug Enforcement Task Force, continue to have a sustained impact on the disruption of narcotics trafficking. The FY 1986 achievements for these two programs alone through August 1986 have resulted in 1,441 arrests and the seizure of 228 pounds of heroin; 16,859 pounds of cocaine; and 664,985 pounds of marijuana.

BLUE LIGHTNING/SPECIAL OPERATIONS

Operation Blue Lightning was conducted between April 3-27, 1985. This operation provided 24-hour coverage of all inlets, cuts, and access areas to the Florida Coast which had been identified as high threat areas. It was a cooperative enforcement effort as manpower and other resource support was supplied to Customs by 22 Federal, state, and local law enforcement agencies as well as the U.S. Coast Guard, the Bahamian Police Force, and the Bahamian Defense Force. It significantly disrupted the smuggling activities of individuals and organizations. Due to the success of this special operation, a Blue Lightning Strike Force was established on a permanent basis in the South Florida area.

To support the Blue Lightning Strike Force, approximately 50 Customs radios on a special frequency have been installed on state and local law enforcement vessels in the operational area. A Blue Lightning Operations Center/Joint-Marine Interdiction Command Center (BLOC/J-MICC) was opened in February 1986, to coordinate all marine interdiction activities in the area, and 40 new interceptor vessels are being procured to increase and update the Customs fleet in this area. Approximately 150 new personnel are also being hired to increase Customs strength in the area. Special initiatives such as condominium-mounted radars, land-based radar-equipped tethered aerostats, and a state-of-the-art High Frequency Single Sideband radio network with voice privacy are being used to improve detection, sorting, and tracking of suspect marine targets. Since its establishment in June 1985, the Blue Lightning Strike Force has been instrumental in the seizure of 8,511 pounds of cocaine; 231,926 pounds of marijuana; 48 vessels; 8 vehicles; 13 weapons; 5 aircraft; and $383,657 in currency and 117 arrests.

INTELLIGENCE INITIATIVES

In the past 5 years, the U.S. Customs Service intelligence effort has expanded to support the needs of the operational officers in the areas of narcotics enforcement, critical technology, commercial fraud, financial analysis, child pornography, and counter-terrorism. The Customs intelligence complement has grown from 40 at Headquarters and 15 in the field to 163 at Headquarters and about the same number in various field offices. Regional Intelligence Branches at each of the seven regional headquarters provide direct intelligence support. Designated Intelligence Officers (DIO) are assigned in every Special-Agent-in-Charge and District Director office to provide intelligence support at those levels, and on-site intelligence collection, dissemination, and reporting is being accomplished in five foreign countries.

The level of contact between Customs and the members of the intelligence community has shown a steady increase, and tactical intelligence from multiple agencies is being disseminated to front-line enforcement officers. Innovative procedures have been developed to process and disseminate classified information to a greater number of Customs users. Two regions have expanded to provide intelligence support on a 24 hours-a-day, 7 days-per-week basis, and the Headquarters Office of Intelligence will operate on the same basis in the near future.

An artificial intelligence capability is being developed to process the large volume of data involved in financial analysis, and its application for other types of data is being assessed. Customs-acquired intelligence is being shared with the national intelligence community, and the community is providing an increased amount of intelligence which has high enforcement potential. A national narcotics threat assessment is produced on an annual basis, and special threat assessments for the Southwest border and the New York Region were completed.

EXODUS/FOREIGN

Since Operation EXODUS began 5 years ago, Customs role in export enforcement has undergone dramatic changes particularly since the enactment of the Export Administration Amendments Act of 1985. Customs has new statutory authorities under the Act for the enforcement of export laws, and most importantly, exclusive jurisdiction for foreign investigations of export violations. EXODUS investigations have resulted in 670 arrests, 470 convictions, and over 5,100 seizures valued at almost $345 million since October 1981. EXODUS is now as permanent a part of our mission through the use of inspectional and investigative personnel dedicated to export enforcement.

The Customs Service has embarked on several innovative programs to enhance the overall effectiveness of Operation EXODUS and this nation's efforts to control the illegal export of our valuable strategic technology to the Soviet bloc and other proscribed destinations. We initiated Operation SNARE, designed to draw attention to the 10 most wanted EXODUS violators; Operation THAW, a U.S. effort to disrupt the illegal diversion, through Canada, of U.S. technology to the Soviets; Operation RETREAD, targeted against diversions of Department of Defense surplus arms and sensitive equipment to our adversaries; and a new program called OUTLARS, to identify investigative targets based on a comparison of Shippers Export Declarations (SED's) against licenses. Foreign investigations by our Attaches have continued to increase the awareness and cooperation of our sister services around the world.

COMMERCIAL FRAUD

The Customs Fraud Investigations Center (CFIC) was established in 1983 to expand Customs efforts in the areas of textiles, steel, electronics, and quota fraud. It has proven to be a multi-disciplined element whose primary function is to support the total Customs effort in combatting commercial fraud. Seizures for textile violations have increased significantly each year with 286 in FY 1984, 389 in FY 1985, and to date in FY 1986, there have been 510 seizures. The FY 1986 textile seizures have a domestic value of approximately $24.7 million. For FY 1985, there were 483 copyright/trademark seizures with a domestic value of $37.5 million. In a 11-month period, there were 406 seizures with a domestic value of $38.9 million. The efforts of this operation have also resulted in a significant increase in arrests, convictions, criminal fines, and civil penalties. Arrests have increased from 8 in FY 1983 to 54 in FY 1985 and 46 through June of FY 1986. Indictments have increased from 35 in FY 1983 to 230 in FY 1985 and 111 through June of FY 1986.

In 1986, a Fraud Detection Section was established within the reorganized Office of Commercial Operations to interact with the commercial community and field offices in such commercial fraud-related areas as country of origin marking, and trademark and copyright violations. A comprehensive commercial fraud manual was developed and will be ready for printing in the near future. Mechanisms were established for apprising field offices of known or suspect marking, copyright, and trademark violations. A national marking project was initiated and continues wherein blitz examinations are conducted on specified products. To date, the results of the marking initiative have been significant with 15 percent to 20 percent of the targeted importations found to be in violation.

PORNOGRAPHY ENFORCEMENT

During FY 1983, the President identified the eradication of obscene and pornographic articles being imported into the United States as an enforcement priority. Special attention was focused on the problem of child pornography. The Customs Service immediately responded to this priority. A special operation was conducted to verify the validity of existing methods used to intercept these materials, and the interception of obscene articles has been a major priority of our field offices since that time.

The Child Pornography and Protection Unit (CPPU) was established at Customs Headquarters on October 8, 1985, to combat the introduction of foreign-sourced child pornography into the commerce of the United States. The Unit's function is to coordinate child pornography investigations and special projects, as well as to collect, analyze, and disseminate data on child pornography violations in conjunction with the Child Protection Act of 1984. The Child Pornography Data Base helps accomplish this mission efficiently. The data base consists of various data files concerning suspects, violators, victims, method of smuggling, and legal research. The data base is not yet fully operational, as it is still being built. However, upon completion of the data base, such things as trends in smuggling methods, violator profiles, source country identification, and known associates of pedophiles can be easily identified for appropriate enforcement or investigative response.

Purveyors of child pornography have been arrested and convicted in increasing numbers. Since establishing the CPPU, Customs has opened 209 investigations resulting in 103 search warrants, 59 Federal indictments, 56 Federal arrests, and 45 Federal convictions. Through June 30, 1986, Customs has made over 1,400 seizures of pornography from the approximate 921 million pieces of mail screened. In approximately half of all of the search warrants served, some evidence of either past or ongoing child exploitation was uncovered and referred to State and/or local officials. Nearly 15 percent of those arrested had been previously convicted of sexual exploitation of a child.

AVIATION PROGRAM

The Customs Aviation Program continues to be upgraded and changed with new technology and equipment, and improved tactics and strategy. In 1986, the acquisition of the P-3 aircraft was completed with a total of four aircraft acquired for the enhancement of our detection capabilities; we now have a total of six Citation interceptors onboard, with two additional on order. The tracking capability of the Aviation Program has been enhanced through the acceptance of the first three of eight CHET aircraft in September 1986. The first of of six C-12 aircraft was received from the Army with the last to be delivered by

November 1986. An additional four Black Hawk helicopters for high speed pursuit/bust purposes were accepted in 1986 bringing our total to eight. The Cariball aerostat was placed into service in March 1986 giving a greatly improved surveillance capability in the Bahamas.

The National threat from airborne drug smugglers is very fluid and every-changing. In order to most effectively respond to this threat and to achieve maximum utilization of all available resources, the Customs Aviation Program proposes to implement a new resource deployment/utilization strategy. This new strategy called the Flex-Force Strategy will provide increased flexibility and mobility and will more readily allow Customs to respond to and support the expanding detection capability of the Customs Service.

MARINE MODULE

A new comprehensive Marine Program has been instituted which integrates all facets of the enforcement effort including strategies and techniques, logistic and maintenance requirements, and new technology. The basic component of the program is the marine module. The module calls for 11 positions and is minimally equipped with 3 vessels (a radar platform and 2 high-speed interceptor boats). Since FY 1984, 11 modules have been implemented at various marine stations. Three additional marine modules are scheduled for the Southeast, Southwest, and Pacific Regions. A variety of high-technology equipment is being tested to enhance tracking, detection, and communication capabilities for marine interdiction. Already tested and implemented is a computerized true-motion radar system capable of simultaneously tracking 10 vessel targets for heading, speed, range, and point of intercept. This is the first application of this equipment on vessels under 200 feet in length. To improve communications within and between marine modules, as well as with aircraft and command centers, all vessels are being equipped with the latest HF/SSB radios, that have sophisticated microprocessor automation and voice privacy. The vessels are also being equipped with Customs VHF voice privacy mobiles. These VHF privacy radios are being provided for state and local law enforcement boats to communicate with JMICC/BLOC, using a separate VHF network and console deployed for this operation.

CANINE ENFORCEMENT

Canine Enforcement Officers (CEO's) are an integral part of our Contraband Enforcement Teams and contribute significantly to our narcotics interdiction and supply reduction efforts. During the first 10 months of FY 1986, the street value of narcotics seized by CEO's totaled $1.2 billion. The seizures included 124,773 pounds of marijuana; 35,936 pounds of hashish; 24 pounds of opium; 3,767 pounds of cocaine; and 21 pounds of heroin.

In recognition of that performance and the potential for increased enforcement effectiveness, the canine program is being expanded both in numbers and coverage in support of Operation Alliance. Authorized staffing has increased 20 percent in the past year (from 135 to 162 positions). The Training Center at Front Royal has added aircraft and boats to its on-site training capabilities in order to provide more realistic exercises to prepare teams for field assignment. Training in currency detection has a tremendous potential to detect undeclared importations and exportation of currency and other monetary instruments.

Detector dog teams trained by Customs are operating in law enforcement agencies at numerous state, county, and city locations in the United States and in 21 foreign nations around the world. The canine enforcement program in Saudi Arabia was developed and implemented by U.S. Customs. Twenty-four additional teams are graduated each year to maintain and expand that operation.

CONTRABAND ENFORCEMENT TEAMS

The Customs Service has developed teams of inspectors and canine enforcement officers to more thoroughly examine persons, conveyances, and cargo determined to be high risk. These mobile teams allow Customs to release cargo and passengers deemed to be low risk without examination, thus speeding the entry of most people and cargo. The teams comprise 12 percent of the inspectional workforce, but have accounted for the greater proportion of the narcotic seizures. During the first 9 months of FY 1986, they have been responsible for 99 percent (35,970 pounds) of the hashish, 81 percent (10,144 pounds) of the cocaine, and 42 percent (201 pounds) of the heroin that has been seized by inspectors.

SEA CARRIER INITIATIVE

During the past 2 years, the Customs Service has taken great strides in convincing the commercial carriers of their responsibilities in the effort to halt narcotics trafficking. As part of this initiative, Customs has contacted the major sea carriers and has signed cooperative agreements with a number of them. These agreements set out specific measures which should be taken to prevent and detect the use of commercial vessels for the smuggling of narcotics and other contraband. These agreements have led to the detection of narcotics on board vessels and the transmittal of valuable information to local Customs officials. In addition, agreements have been signed with major associations of sea carriers such as the Pacific Merchant Shipping Association and individual carriers such as Grancolombiana and the Holland America Lines. Regional agreements with several carriers are under discussion in the Southeast, Southwest, and Pacific Regions.

AIR CARRIER INITIATIVE/COOPERATION

During 1984/1985, the Customs Service successfully developed programs of mutual cooperation and assistance with the Air Transport Association of America (ATA) and the International Air Transportation Association (IATA) to prevent narcotics smuggling. Specific agreements were signed with eight high risk carriers, and negotiations continue with several other airlines. In addition, Customs has won the endorsement of the Customs Cooperation Council and the U.N. Committee on Narcotic Drugs for this program. In maintaining the momentum of his initiative, during FY 1986, we began to work closely with carriers, apprising them of their vulnerabilities through regular meetings; providing a training program on cargo, aircraft, and facility security; performing security surveys; and compiling threat assessments. This program has been provided at 22 international locations involving 35 international air carriers. A total of over 1,100 mid and upper level airline and airport supervisors have participated in the training program. Field and Headquarters managers have met with carriers, airport authorities, and industry associations to reinforce program objectives.

RADIO VOICE PRIVACY CONVERSION PROGRAM

Customs demonstrated its commitment to total conversion of the nationwide radio system to voice privacy by procuring substantial quantities of equipment to replace the current sector network and for new programs. The sector networks in the Southeast Region and New York Region have been converted to voice privacy, and equipment is on order to complete the conversion of the southern border network from the Gulf Coast to the Pacific Ocean, as well as the conversion of the Puerto Rico system. Mobile and portable privacy radios have been provided for enforcement requirements throughout the Southeast Region and for the EXODUS, OCDE, FJTG, and JMICC/BLOC programs. More than $15.7 of voice privacy/ equipment is now on order, including 1,983 mobile radios and 1,339 portables. This equipment is principally directed toward the needs of the Southwest Border Initiative and Operation Alliance and will satisfy the enforcement radio requirements in the Southwest and South Central Regions and in the lower Pacific Region. In addition, this procurement includes mobile radios purchased from the Forfeiture Fund for use in seized vehicles elsewhere in Customs.

SECURE COMMUNICATIONS

In support of the EXODUS program, a new secure communications program was initiated using STU-II telephones to provide a secure voice and/or data network, spanning 50 Customs locations. CPT data terminals and new, more reliable, secure facsimile equipment are linked to the STU-II terminals at key locations throughout the Service. In addition, a secure communications network and key material distribution system was implemented for 12 Customs Aviation Operations facilities using VINSON-encrypted radio equipment. A Communications Security Branch was established to manage the National COMSEC Program and oversee COMSEC accounts at 41 locations.

OVER-THE-HORIZON ENFORCEMENT NETWORK (COTHEN)

A state-of-the-art HF/SSB radio system is being implemented to support the long-range communications requirements of the Air and Marine Programs. A fixed site has been implemented near Atlanta and one near Memphis, with remote control units deployed at the sectors in Miami, New Orleans, and Houston; a control unit at the JMICC/BLOCC center; and an order placed for one at the Miami C3 that supports the air program. Initial deployment of HF/SSB mobiles is in progress on Marine Platform boats. The system provides automatic connectivity between and amoung mobiles and fixed-station remote control units and provides either clear or private communications. In addition, the design provides for use of Parkhill COMSEC equipment at remote control units, providing interoperability with Coast Guard and military resources.

ENFORCEMENT SYSTEMS SUPPORT

The Treasury Enforcement Communications System (TECS) continued to provide Customs and other Federal, state, and local law enforcement agencies with improved and new levels of service. An interface was implemented between the TECS and ACS computer systems, allowing a TECS query to be performed from an ACS terminal. Significant improvements were made in the exchange of data between Customs and EPIC, especially in the area of private aircraft information. New systems developed include: the Aircraft Tracking System, the Automated Target Flight Connection System, and the Multiple Border Crossers System.

Significant progress was made during the past year on TECS II, the redesigned replacement for current TECS. In a combined effort by Customs users, other agency users, and Data Systems staff, detailed specifications for the new system were completed. Based on these requirements, a major contract was awarded for the design and development of TECS II. The preliminary design was subsequently completed and the detailed design and programming tasks are now in progress.

ENFORCEMENT SUPPORT EQUIPMENT

Customs developed the specifications for and has built the world's first Automatic Currency Reader for tracing drug money. The unit has been delivered and is in field use. Technical specifications has been written for the development of additional units in FY 1987. An automated license plate reader for automated entry of data into Customs Treasury Enforcement Computer System is also under development. Numerous field tests have been made of the one-lane prototype, with delivery of the system scheduled for FY 1987. Customs also developed a Contraband Detection Kit of mostly high technology equipment for use in Customs search scenarios. These kits include the Customs-sponsored gamma ray backscatter portable contraband detector, an ultransonic rangefinder, and a fiberscope. Also included is a retractable pencil probe built by a contractor under Customs guidance for use by inspectors. Customs also sponsored research that proved that Nuclear Magnetic Resonance Technology can be used to detect cocaine in letter mail. A prototype was built and used effectively.

Thirteen small-parcel X-ray systems (non-conveyorized) were built to Customs specifications and were placed in operation at passenger arrival areas at airports and land border ports of entry. Conveyorized systems for examining parcel mail were activated at mail facilities in Jersey City, New Jersey and Miami, Florida. Specifications were developed and a procurement was undertaken for delivery of 11 mobile X-ray systems for use at airports on both incoming/outbound cargo and baggage.

Secure weapon cabinets for visible storage of shotguns for ready access by Customs personnel were developed and installed at 34 ports of entry along the Southwest Border. Other enforcement support equipment fielded during the period of FY 1982-1986 includes: color-image aerial maps of the Southwest Land Border, 60 fiberoptic/miniature camera devices, 20 diamond verification devices, and cannabispray for verification and confirmation in the field of the presence of marijuana residue.

CONSOLIDATION OF ENFORCEMENT (PATROL/OI)

Since late 1973, the Customs Service has had two distinct enforcement components: the Customs Patrol/Office of Tactical Enforcement, whose role it is to interdict the illicit importation of drugs and other contraband into the country; and the Office of Investigations, whose role it is to investigate the violation of Customs and related laws.

The Consolidation of the Investigative and Tactical Enforcement functions of the U.S. Customs Service into a unified organization structure in the Headquarters and field was completed during 1986. The consolidation of the two functional areas into one homogeneous organization structure provides for a single "chain of command" which will substantially enhance the integration of our interdiction and investigative efforts.

The last steps in the conversion to a single law enforcement occupational series (GS-1811 Criminal Investigator) were also completed in FY 1986. This effort, in conjunction with the organizational consolidation, established a clear career path of all law enforcement officers within Customs. The cumulative effect of the consolidation/conversion project was to establish the foundation for a fully-integrated law enforcement effort by the Customs Service.

ECONOMIC SANCTIONS

Customs plays a major role in enforcing sanctions which have been imposed against Cuba, Nicaragua, and, most recently, Libya. Economic sanctions are an integral part of the Administration's foreign policy towards specific nations. Customs works closely with the Office of Foreign Assets Control (OFAC) in the enforcement of these sanctions and is currently in the process of assisting OFAC in tightening up the various sanction regulations along with developing a training program to aid our officers in this enforcement role.

PRIVATE AIRCRAFT ENFORCEMENT

Significant improvements have been made in increasing enforcement effectiveness for private aircraft. Major regulatory changes have been implemented, and agreements have been reached with both DEA and FAA to increase information available to Customs. A comprehensive aircraft search training program has been developed and conducted nationwide. A TECS-FAA interface has been developed which provides involved field offices with flight plan information and the results of TECS checks within 30 seconds of receipt by FAA. It is operational in Miami and San Diego. An inspection team has been placed at EPIC to coordinate real time assessment and evaluation of DEA suspect aircraft data. Major improvements have been made to TECS to support private aircraft enforcement including an aircraft tracking system and new aircraft lookout procedures. Agreement has been reached with NLETS to expand the tracking system to include state and local law enforcement sightings and intelligence.

CARGO ENFORCEMENT

Customs has strengthened its efforts in the areas of cargo enforcement. Special commodity programs have been implemented and enforcement procedures revised. Operation Heavy Metal resulted in the seizures of 10,143,092 tons of fraudulently entered steel valued at approximately $2 million. The National Marking Initiative resulted in the detection of marking violations on 16 percent of the shipments targeted. Guidelines have been developed for the seizure of overweight steel shipments, and a program for the exportation of USDA licensed sugar has been implemented.

ENFORCEMENT TRAINING

We have improved enforcement training at the Customs Service Academy at Glynco by upgrading the quality and number of instructors, increasing the quality and number of schools (i.e., Customs Basic Investigator School, Customs Investigator Conversion Training) and changing the quality of Basic Special Agent School, especially in the investigative discipline blocks such as Fraud, Smuggling, Strategic/EXODUS, and Pornography. Effective practical exercises have been added along with a counselor program and a physical fitness program. We have also placed physical fitness/counselors in the CIT.

Working with FLETC and the Comptroller, we established a modified CIT/BAS Training for GS-13's/GS-14's being converted to 1811's. We have held highly effective Undercover Manager and Undercover Operative Schools at Arlington and the Xerox Training Center, Leesburg, which will continue at Glynco. The Office of Intelligence conducted the first DIO training seminar at Xerox. The Director of Enforcement Training at the Academy is developing a first line supervisors school. The first one will take place in October 1986 at Xerox. The first Intelligence Analyst school was conducted at the Customs Academy this fiscal year.

A number of Basic Agent, Investigator, and Aviator training schools will be at "FLETC West", Marana, Arizona, one beginning January 1987, necessitated by an overload of conversions and new hires for training at Glynco, new requirements of pending drug legislation, and various training for Operation ALLIANCE.

Steps have been taken to improve Marine Law Enforcement training for Customs at FLETC including the addition of equipment, boats, and scheduled curriculum conference for updating the program.

COMMERCIAL/FACILITATION

AUTOMATED COMMERCIAL SYSTEM (ACS)

The development of an efficient on-line system covering all of Customs commercial operations was begun in February 1983. It is intended to expedite the processing of cargo entry through the installation of automation technology and is a total redesign of Customs entry processing, collection, and liquidation systems. Currently 46 brokers in 54 locations are operational under Automated Broker Interface (ABI) which is part of ACS. Twenty-three percent of Customs total entry volume is now processed through ABI and another 10 percent is expected in the near future. An enhanced and integrated cargo selectivity system has replaced the stand-alone system in all former ACCEPT locations. In addition, under ACS we have implemented a completely revised bond system, a module for controlling protests, an in-bond module, and a completely revised financial processing module that includes electronic funds transfer and assessment/collection of interest.

In FY 1986, ACS continued to be expanded and enhanced with the implementation of new modules, the expansion of existing modules to new locations and the development of significant new capabilities for ABI brokers. Implementation of the ABI/Selectivity Interface and development of entry summary selectivity has made the possibility of paperless entry and paperless entry summary a reality. The ACS Quota module was implemented which eliminates redundant data entry and provides ABI brokers with information messages concerning new or changing quotas through an electronic transmission from the Headquarters Quota Section.

SELECTIVITY

During the last 5 years, the Customs Service has developed many manpower efficient systems for dealing with our major workloads. Using innovative selective processing and automation, we have been able to absorb our workload increases and intensify our enforcement efforts. The red/green processing and one-stop processing at airports show that facilitation and enforcement objectives can be maintained. The Operational Analysis Staff (OAS), under the direction of the New York Region OAS, has taken over responsibility for the input, update, and monitoring of enforcement criteria in the ACS system. The resulting refinement of criteria has resulted in even better selectivity for high risk shipments.

An enhanced and integrated cargo selectivity system has replaced the stand-alone modules in all major cargo processing locations. This new system features an Automated Broker Interface (ABI) with cargo selectivity to produce electronic release information to brokers, carriers, and port authorities. Testing is now being conducted for a new borderline release and entry accountability system. The Automated Manifest System (AMS) is operational in two seaport locations. As the sea manifest becomes more developed, carriers, port authorities, and terminal operators will exchange electronic data with Customs to obtain cargo releases.

AIR PASSENGER FACILITATION

U.S. Customs has implemented a red/green passenger processing system at 11 of our nation's busiest airports. In this system, the passenger elects a red or green inspection lane based on the need for special processing or routine clearance. The system has reduced the processing times at all of these airports. For example, at Miami International Airport, passengers now move from the aircraft through the entire inspection process in an average of 33 minutes, an improvement of 7 minutes over the previous system. Inspectional personnel have also received extensive training in observational profiles and behavioral analysis. These selection techniques and systems have allowed us to move air passengers at a much faster rate without the requirement for additional manpower. In fact, our seizures have increased at airports with the red/green system while complaints from the public have dropped.

LAND BORDER PASSENGER PROCESSING

The land borders have received relatively little attention in the past, but in the last 3 years significant changes have taken place. These changes include: the upgrading of port facilitites; the training of inspectors in the use of observational techniques and behavioral analysis; the development of violator profiles of the various types of narcotics and currency smugglers, known as the Border Processing Improvement Plan (BPIP); the use of new technology such as fiberscopes, automatic license plate readers, and contraband detector kits; and the designation of vehicles as either high-risk or low-risk by "Rovers" in front of the primary inspector when there is a back up of traffic. These have been very effective in both dramatically increasing the number of seizures and enforcement actions and the facilitation of traffic.

Due to the increasing terrorism threat and the murders of DEA agents and Customs inspectors, an Officer Safety/Survival Training Program was developed, and training has been given to over 1,100 Federal Inspection Service personnel on the southern border. Contingency plans have been renewed and updated to respond to new acts of violence or serious threats. Port security alarm systems have been installed at all southern land border ports of entry. Video surveillance system, with recording capabilities, are being tested at El Paso, Texas. These will provide extra security and safety for the inspector and the port. Shotguns in secure, highly visible guncases have been installed at ports along the border.

INTERNATIONAL INITIATIVE

U.S. Customs has made significant progress in negotiating formal Bilateral Customs Assistance Agreements with other countries. Negotiations through 1983 and 1984 led to the signing of a bilateral agreement with Canada in June of 1984. Negotiations with Italy and Spain (which began in 1978) have resulted in the formal signing of an agreement with Italy in November of 1985. The U.S.-Italy agreement is now before the Italian Parliament for approval. Negotiations with Spain have resulted in the initialing of an agreed upon text, and formal signing should occur in 1986 or early 1987. Negotiations with Korea and Sweden in 1984-1986 have resulted in agreement on texts with both countries. Formal signing with Korea is now scheduled for late October 1986, and formal signing with Sweden should occur by April 1987. Preliminary discussions are underway for future agreements with Israel, Cyprus, Panama, Greece, and the United Kingdom.

A major new initiative in the international narcotics control effort, introduced in 1984, implicates air and sea carriers in responsibility for the security of their commercial ships and aircraft against drug trafficking. A resolution on this subject, introduced by U.S. Customs, was adopted by the United Nations Division of Narcotic Drugs (UNDND). Due to U.S. Customs efforts, the Customs Cooperation Council accepted a similar recommendation. Customs also succeeded in including this activity and other facilitating Customs enforcement efforts in a proposed international convention on illicit drug trafficking as well as in the planning for the 1987 World Conference on Drugs. These international initiatives are expected to reduce narcotics smuggling activities carried out through internal conspiracies.

IMPLEMENTATION OF THE HARMONIZED SYSTEM

Replacing the Tariff Schedule of the United States Annotated (TSUSA) with the Harmonized System Tariff has been an ongoing priority. This change will standardize the numerical codes and commodity descriptions for all goods in international trade. Basic Harmonized System codes and narrative commodity descriptions will be identical at the 4- and 6-digit levels among the 96 nations comprising the Brussels-based Customs Cooperation Council who adopt the new system. For the United States, therefore, imports and exports will be described identically through the 6-digit level. The system updates tariff items to include state-of-the-art products and applications. The implementation date for the System is January 1, 1988.

An internationally recognized course for internal Customs training began at the Federal Law Enforcement Training Center in August 1986 and will be given throughout the Service for more than 400 employees by March 1987. Broker training and industry seminars on the Harmonized System Tariff are being developed with importing community representatives and will begin in early 1987. In addition to technical training, Customs has begun orientation efforts for inspection and enforcement personnel and is revising publications to reflect Harmonized System Tariff changes. Customs has also begun development of a videotape presentation for district directors to use in speaking to local business groups, alerting them in advance to the potential effects of the new tariff on their firms and the substantial expected paperwork savings and improved international trade statistics the standardized coding will generate.

COMPLIANCE BY POST AUDIT

Over the past 5 years, Customs has utilized its audit capability to ensure compliance in various ways. There have been 2,373 routine audits performed with $97.7 million identified in recommended recoveries. Full support to Customs commercial fraud efforts, represented by 86 audits over the last 3 and one-half years, has resulted in an additional $46.5 million. Customs also uses its auditors in daily operational modes to more efficiently utilize its manpower. In 1982, Customs adopted an audit-inspection approach to control its 1,500 bonded warehouses by substituting 52 auditors and inspectors for 475 other personnel formerly required to control the bonded warehouses. Prior to its implementation we were collecting in excess of $7 million for reimbursable warehouse officers' salaries from warehouse proprietors. Under the Audit-Inspection Program, the collections from proprietors in FY 1985 were approximately $2.1 million. While reducing our costs (which were passed to the private sector) by $5 million, we have implemented a more efficient system and have maintained a strong enforcement posture. During 1986, Customs has extended this philosophy to controlling its 200 foreign trade zones with the issuances of new regulations, saving 13 Customs positions and $4 million in costs.

LABORATORY PROGRAM

The Customs laboratory system consists of eight laboratories including the San Juan Laboratory and the Headquarters research laboratory. In 1982, two field laboratories were closed in Boston and Baltimore and their functions transferred to other laboratories resulting in a more efficient laboratory system. During the last 5 years, the laboratories have improved sampling selectivity through the National Commodity Sampling Information System (NCSIS), thereby increasing the cost-effectiveness of sample analysis. The Wind Tunnel, a device to detect narcotics being carried by air passengers, has been developed and tested. This device will aid in air passenger facilitation. It is scheduled for implementation at a major airport in FY 1987.

During FY 1986, the laboratories provided dockside analyses of steel and textile importations utilizing three mobile vans especially equipped for this purpose. Also during FY 1986, we replaced an old computer system which could support only one lab at a time with a fast, reliable, centralized system using the IBM 3084. Since all Customs laboratories now share a powerful data base, Headquarters Technical Service personnel now prepare ad hoc reports and make inquiries into any data on the file. Each of Customs eight laboratories regularly shares lab results, reports, and other information in a matter of minutes.

CENTRALIZATION OF DUTY ASSESSMENT LOCATIONS

Centralized appraisement is one of a number of Customs initiatives designed to reduce operational overhead. Centralization follows the 1981 Congressional mandate to reduce operational locations through modern management techniques and good communications. In 1983, the U.S. Customs Service centralized 13 duty assessment locations. In addition, five other locations were centralized by attrition prior to 1983. An estimated $3.5 million will be saved in the first 3 years by the centralization of these 19 locations. There have been no major problems or disruptions in service to the importing community due to this centralization. Close communication between the receiving location and the affected importing community, together with the development of new procedures to facilitate the transfer provided a smooth transition.

CARIBBEAN BASIN INITIATIVE (CBI)

Following the enactment of the Caribbean Basic Economic Recovery Act on August 5, 1983, Customs played a major role in the implementation of the CBI, a program designed to assist the economic development of the Caribbean Basin through the granting of duty-free treatment on eligible exports. Customs efforts included the preparation of the necessary implementing regulations and of administrative instructions for field offices.

On February 20, 1986, the President announced a special trade program to guarantee access to the U.S. market for Caribbean-produced textile products made from fabric formed and cut in the United States (the "Special Access Program"). A computer is being installed to administer this program, which will be controlled and coordinated by our New Orleans office. Customs continues to provide representatives to speak at CBI trade conferences held both in the United States and abroad. At a number of these conferences, Customs has set up information booths to highlight its important role in the CBI programs and to pass out Customs CBI booklets and pamphlets and answer questions from importers and exporters.

TEXTILE PROGRAM

On May 9, 1984, the President issued Executive Order 12475 which directed, in part, that we amend and clarify the textile rules of origin to prevent the circumvention and frustration of our international textile agreements. The final origin rules prevent minor pressing or manufacturing operations from changing the country of origin of textile products and thus, to a large extent, prevent importers and foreign manufacturers from shifting their merchandise from country to country to achieve preferential quota treatment. Billions of dollars of merchandise is affected each year by the eight new origin rules.

In FY 1986, Customs issued revised entry procedures for all commercial shipments of textiles and textile products, including requiring information on quota charges, to ensure tighter control of these shipments from all countries and to strengthen our initiative on textile fraud. We also issued operating procedures to implement a new program covering Caribbean-produced textile products made from pieces or parts wholly formed and cut in the United States. The Office of Enforcement, coordinating with the Offices of Commerical Operations and Inspection and Control, conducted blitz operations to detect and investigate textile violations in targetted areas. The CFIC coordinated, and is continuing to coordinate with the Customs Attaches in our foreign offices to verify textile production capabilities of factories in countries who have no history of textile exporations to the United States. These programs, plus intensified examinations, have resulted in the elimination of a number of fraudulent practices in the textile area.

ENTRY SIMPLIFICATION

A major initiative was undertaken by an inter-office task force to evaluate "entry" processing. The group analyzed entry procedures and organizational structure at 10 locations processing approximately 65 percent of the total entry volume. The task force prepared a comprehensive report that defined the changes required to effectively carry out Customs entry functions in the districts and ports. Changes in organizational structure, staffing, position descriptions, and procedures are addressed in the report's recommendations. Work towards implementing the recommendations has already begun and, when a final determination is made to proceed with the recommendations, task forces will be assembled in each Region, with Headquarters oversight, to assure that they are implemented expeditiously.

CARGO FACILITATION

Procedures for the examination and release of commercial cargo have been streamlined to complement ACS Cargo Selectivity. Innovative policies such as centralized examination, centralized devanning, and audit-inspection supervision in Foreign Trade Zones and Bonded Warehouses have been developed and implemented. New fee structures have been implemented for Foreign Trade Zones and Bonded Warehouses. General Order warehouse reforms have been initiated, with quick sales of low-value merchandise. Innovative procedures for the expedited release of low-risk cargo have been developed including the PAIRED program and line release procedures. Customs forms 3461 and 3641 (alt.) were revised, and training was provided to line officers and the trade community across the nation.

MANAGEMENT IMPROVEMENTS

CENTRALIZATION OF ADMINISTRATION

Efforts to cut costs and streamline administrative support activities resulted in a major initiative to centralize virtually all administrative functions on a servicewide basis. Completed within less than 1 year, administrative centralization will provide an annual recurring savings of approximately 265 staff years and over $5.5 million. The savings and FTE reductions were reallocated from administration to direct operational and enforcement programs. Most support services are now provided by the National Finance Center and the National Logistics Center in Indianapolis. The Centers are located in a new facility that was constructed to meet Customs needs. The central offices for the personnel, management analysis, and data processing functions are located in Washington, D.C. Administrative centralization has allowed Customs to take full advantage of technology advancements such as the automation of requests for personnel services and the direct field input of time and attendance. Customs officials in the field can now electronically transmit information and requests directly to Headquarters without paper and mail delays. Standard turnaround times have been established to ensure timely service to all Headquarters and field offices. Backlogs carried over from the regional offices have been cleared.

SEIZED PROPERTY

The Customs Service has awarded a contract to Northrop Worldwide Aircraft Services, Inc., for the custody, transportation, care, safeguarding, sale, and other disposition of property seized by or forfeited to the Customs Service. This contract may be worth $44 million over the next 4 years if all options are exercised. This is the largest such contract ever awarded by the Customs Service and possibly the Federal Government. It is intended to provide for efficient and effective management, care, and disposition of seized, forfeited, or voluntarily abandoned property through the use of a nationwide contractor. In the past, this property may have remained in Customs custody for as long as 36 months, causing considerable storage and maintenance problems for Customs personnel. As a result, the resale value of the property was often reduced due to deterioration during the storage period. In FY 1984, Customs seized 9,347 vehicles, 157 aircraft, 558 vessels, and made more than 33,000 seizures of general merchandise. Total seizures for FY 1984 were valued at more than $511 million. In FY 1985, Customs seized 9,323 vehicles, 146 aircraft, 524 vessels and made 32,679 seizures of general merchandise. Those seizures for FY 1985 were valued at $550 million, in addition to 1,114 seizures of monetary instruments valued at $97 million. Total: $647 million. We anticipate that as much as $750 million in property will be seized by Customs in FY 1986.

FORFEITURE FUND

The Customs Forfeiture Fund was established by Congress for the deposit of net receipts from seized and forfeited merchandise and currency. The funds are used to reimburse the salaries and expenses appropriation for excess costs as well as to outfit seized conveyances (aircraft, vessels, and vehicles) for use in Customs law enforcement efforts. Customs was appropriated $6 million for this fund in FY 1985 and $8 million in FY 1986. It is anticipated that the fund will remain at $8 million in FY 1987.

GRACE COMMISSION

The President's Private Sector Survey on Cost Control, better known as the Grace Commission, was established in June 1982. The Grace Commission was directed by the President to identify opportunities for potential savings and increased efficiency in the Federal Government. The Grace Commission made recommendations in a final report which addressed areas where cost savings could be made. These areas included personnel, data processing, and procurement. Customs has completed the following projects under the Grace Commission recommendations: 1) implemented the Model Seaport concept nationwide using a selectivity system, 2) raised the maximum level for informal entries, and 3) reviewed short and long-term systems availability requirements including the development of a 5-year information systems plan focusing on ADP development and implementation.

USER FEES

Significant workload increases have generated considerable pressure on Customs to increase resources in various locations, particularly at large ports. Workloads at smaller ports have remained the same or have increased only slightly. On April 7, 1986, P.L. 92-272 was enacted which established Customs processing fees, e.g., commercial vessels - $397; air and sea passengers - $5; private vessels and aircraft - $25 annually; and Customs brokers permit - $125 yearly fee. Fee collection began July 7, 1986. It is estimated that $174 million will be collected on an annual basis as result of this legislation. No additional Customs resources are required to collect these fees.

REDUCTION OF PAPERWORK/REGULATORY REQUIREMENTS

During FY 1986, Customs continued to place a high priority on reducing the paperwork burden on the public. Reflecting this priority, the Commissioner completed his personal review of all reporting requirements imposed on the public by the U.S. Customs Service. This review involved a form by form review to determine that the information requested was only that necessary for Customs to perform its regulatory and operational functions effectively. As a result of these efforts, automation, and the implementation of new procedures, Customs was able to reduce the reporting burden of the public by more than 800,000 hours. Changes planned for FY 1987 will reduce reporting burden by another 500,000 hours. In addition, Customs completed a major regulatory review project to eliminate information collection requirements from the Customs Regulations. Approximately 50 requirements were identified as no longer being required. A proposed rule was published in the Federal Register to eliminate these requirements. The public comment period ended in FY 1986, and a final rule is being prepared for publication to amend the Customs Regulations. The amendments to the regulations will eliminate 6 forms and 33 unnecessary information collection requirements.

INTERNAL CONTROL PROGRAM

The Customs Management Control Evaluation Program (Internal Control) was redesigned during FY 1983/1984 in accordance with the guidelines and standards established by OMB and GAO. Since then, Customs has simplified the basic evaluation process provided by OMB and integrated it into Customs normal management procedures. An emphasis was placed on identifying critical risks in each program and evaluating our controls over those risks. Customs then trained Headquarters and regional managers on the management control evaluation process and the documentation of management controls. Revised risk assessment procedures were developed and pilot tested at selected field offices. Customs then established a review cycle ensuring that all programs will be systematically reviewed over a 5-year period (established by OMB). This review cycle requires that a management control plan be developed by most SES managers each year. The new management control plan requirement will be incorporated into the FY 1987 performance plans of SES managers. These changes have eliminated a tremendous amount of paperwork and have integrated the review of management controls into managers normal duties and review processes.

DATA CENTER - FRANCONIA, VIRGINIA

A large-scale computer conversion and relocation was completed in February 1983, which resulted in the consolidation of all Customs administrative and commercial systems on an IBM 3081 located in the new Customs Data Center in Franconia, Virginia. Over one million lines of code were converted. This conversion effort has centralized Customs commercial systems and provides for an orderly development of new, related systems. For example, Customs is expanding services in many areas such as interfaces with port authorities, air carriers, sea carriers, customs brokers, and other governmental agencies. To support these rapidly growing areas, Customs, in 1986, installed an upgraded IBM 3090-200 computer which will enhance computer resources.

CONSOLIDATED DATA TELECOMMUNICATIONS NETWORK (CDN)

Currently, the U.S. Customs Service has two independent telecommunication networks, one which supports the Treasury Enforcement communications System (TECS) and runs on the Burroughs B7900 at the San Diego Data Center and the other which supports the Commercial and Administrative Systems and runs on the IBM 3084 located at the Franconia Data Center. The project entails the combining of these two networks into one. During FY-1985, a contract was completed and awarded to the Computer Sciences Corporation (CSC) for the design and development of the new network. This contract, which was awarded in August 1985, will also give CSC the operational responsibility of the network.

Total evaluated cost of this contract is $48.5 million. Treasury expansion of the project will be valued at $282 million. A 6-month pilot test was performed by Computer Sciences Corporation and accepted by Customs in April 1985. Implementation of the total Consolidated Data Network for Customs will be accomplished within 2 years of the contract award. Improvements derived from this network will include: reduced costs, capability to handle expansion and growth needs, improved reliability and diagnostics, as well as, minimum redundancy.

CUSTOMS DRUG SCREENING PROGRAM

The Customs Drug Screening Program was placed in effect for outside hires on June 25, 1986, and expanded to include Customs internal selections on August 11, 1986. Drug screening is required as a condition of employment or placement into a position specifically covered by the program. Positions covered are those directly involved with drug interdiction and enforcement of drug laws or those requiring the incumbent to carry firearms or handle classified materials. The program is essentially voluntary in that candidates apply for the covered positions. Should a candidate refuse to undergo drug screening, he/she will lose consideration for the position.

CUSTOMS EMPLOYEE TRAUMA AND PERFORMANCE COUNSELLING PROGRAM

During 1986, Customs designed and piloted an Employee Trauma Program to assist enforcement officers who suffered traumatic incidents on the job, e.g., shootings. A cadre of Customs employees as well as a police psychologist were dispatched to manage the various aspects of each type of incident and to provide support and technical assistance to the survivors (both family members and co-workers who witnessed these events). This professional response team effort received very positive feedback from the involved employees. Customs has approved an expanded version of this program, which has been redesignated the U.S. Customs Employee Trauma and Performance Counselling Program, for full scale implementation in FY 1987.

SECURITY INITIATIVES

Oversight of all security in Customs has been centralized in the Office of Security within the Office of Internal Affairs. This reorganization provided the Office of Security with responsibilities for oversight and coordination of physical, ADP, communications, and information security activities in Customs. A technical surveillance countermeasures program has been initiated, as have information security inspections to ensure compliance with classified information security procedures. We have established a program of physical security systems checks for Customs Headquarters and have implemented a temporary headquarters building access control system, which is scheduled to be replaced by the permanent automated access control system in December 1986. In August 1986, we began the process of acquiring a uniform servicewide access control system to be installed in all Customs facilities.

During the past year, steps were taken to improve the security posture of sensitive information processed and transmitted by our ADP and data communications systems. A state-of-the-art access control system (approved by the National Security Agency, NSA) has been installed on a mainframe computer operating at the Franconia, Virginia, Data Center. The system is providing security for ACS currency investigation systems, Customs administrative systems, and several other sensitive programs.

AIRPORT SECURITY PROGRAM

Sharp increases in terrorist attacks against European airports and American citizens pointed out a need for the development of adequate plans for handling high-risk arrivals of aircraft and also the need to improve the integrity and security in authorized inspection areas in airports. In response to this need, Customs established a standard policy regarding Customs role in airport security and defined areas of responsibility in the event of terrorists threat at an airport.

To improve the security of authorized inspection areas, Customs regulations were implemented requiring the use and display of a Customs approved identification strip or seal on existing identification cards worn by employees requiring regular access to areas designated as "Customs Security Areas." The Customs Security Areas include the Federal Inspection Site, ramp area, and baggage or cargo staging areas, and those areas where international cargo is stored, processed, or handled. This allows Customs to identify and control the individuals who have unescorted access to the inspection areas.

In addition to the establishment of defined areas of responsibility in the event of a terrorist threat and controlling the access to the Customs Security areas, the individual airports have developed contingency plans in conjunction with appropriate Federal, state, local, and airport personnel.

Chairman **Gibbons**. Thank you, sir.

How are you going to get along with 2,000 less employees?

Mr. **Lane**. Well, we will have to look at every program area, inspectors, import specialists, and enforcement area, and take as many cuts as we can through attrition, and the remainder of those we will have to consider reductions in force.

I think that in the time I have been in Customs, which is most of the time since 1970, we are probably better equipped with the manpower and equipment and systems that we have now to deal with the problems facing us than we ever have been in the past.

Chairman **Gibbons**. Well, I hate to complain about isolated instances, but I was down in the Bahamas the other day, and we sure did not have enough people there. It took a long time to process. I know that is a preclearance operation, and I know it is not a high priority. But there were an awful lot of American citizens there blaming it on the Bahamians. I kept my mouth shut. I did not want to get lynched there.

Maybe it was just unusual, just a bad day.

Mr. **Lane**. Well, I am glad I was not with you. One of the problems that we have——

Chairman **Gibbons**. I wish you had been.

Mr. **Lane**. One of the problems that we have in all airports, including most of our preclearance sites, is the problem with peaking. Most of the airlines want to leave in a certain short time period throughout the day, and then there are flights that come in earlier and later and we do have a staffing problem. Sometimes we have more people than we need, and at other times less.

Chairman **Gibbons**. Well, I realize you cannot operate just for the convenience of the airlines. We are a service and a required service. As I say, I felt so sorry for the Bahamians because they were catching all the hell for it. It was really INS and your service.

I would not say they were dragging their feet. I watched them very closely, and they did as well as they could do under the circumstances.

I heard 20 or 30 American citizens say, "I will never come back to this place again. I have never been treated so-and-so in my life." There really was a lot of complaints.

Mr. **Lane**. The complaint was about the time, not the treatment?

Chairman **Gibbons**. Time; long lines of people. In fact, you know, in that kind of confusion, nobody seemed to know what they were doing. I realize they did, and when I got to the desk, the fellow did not treat me any differently than he treated everybody else. He did not recognize me, thank God. He treated me very courteously and very expeditiously, and I have no complaints. But it is just that there were not nearly enough people to handle all the Americans who were trying to get back to the continental United States and were getting a preclearance.

As I say, I do not think half the people understood what was going on. They were blaming it on the Bahamian Government, who is not responsible for the mess, and it was kind of embarrassing. I kept my head low and my mouth shut and stayed out of the way. I can see with 2,000 less employees that is going to be a lot of fun. That will keep more Americans home than anything I know of. Some of them will be standing in line for days with that.

How much more money is it going to cost to keep you at the existing employee level?

Mr. **Lane**. I think it would be over $900 million. $917 million.

Chairman **Gibbons**. You know, I have got a feeling that this is just a game that OMB is playing over there. Is anybody here from OMB?

[No response.]

Chairman **Gibbons**. They are just playing a game. They know we are going to put the people back in because we are not going to have Americans standing around for days in line trying to clear customs. And we want you to enforce the laws, so I figure they are playing a game. You know, throw it into the defense budget, and we have to take it from somewhere to get it back into the appropriations budget.

I really am sick of playing the game. I think maybe one year I will just let you live with the thing and see what happens. But if you see those people from OMB, tell them I am sick of playing the game. I think most members are, too.

Let us see. Mr. Schulze had to go.

One of the things that we were interested in—and it may be a little embarrassing. I have got Mr. Richard Judy here. He was going to be on the advisory commission, and we got letters from you all, Mr. Schulze did, and I did, and I do not know how many other people did. Then you appointed him and left Mr. Judy off. How did he get left off?

Mr. **Lane**. Well, Mr. Chairman, the process for selecting the representatives to the User Fee Committee began, I think, in September of last year, and that original list, I believe Mr. Judy was on that list, and at that time——

Chairman **Gibbons**. He must have been on the list because you wrote me a letter, or somebody over there wrote me a letter that said he was going to be appointed.

Mr. **Lane**. Someone wrote you a letter. I happen to know I did not. It went over to Treasury, and that list was never approved by the Secretary. They asked us to provide them another list, which we did, and this happened I do not know how many times—four or five times, I suppose—and asked us to expand the list, then to reduce it, back and forth, to make it more geographically and functionally representative of the people who were paying the fees. Somewhere along the line in that process, the Miami Airport Authority was left off.

Chairman **Gibbons**. Well, you know, that is a pretty busy airport. I am sorry you left him off. I think he is a well-qualified person. I guess the Secretary has his reasons or whoever was acting for the Secretary had his reasons.

Okay. Mr. Guarini?

Mr. **Guarini**. Thank you, Mr. Chairman.

As I understand it, there is a reduction of 2,000 positions and about $119 million in requests in comparison with the continuing resolution from last year. Is that right?

Mr. **Lane**. Yes.

Mr. **Guarini**. Now, also last year on the drug bill that we passed, we call for more Customs officers, and I believe there must have been about 1,800 additional Customs officers that it was felt, when the President declared narcotics to be our top priority, that had to be added to the Customs force in order to tighten up our border. That was one of the essential problems that we have had, and that we addressed in the omnibus drug bill.

Now, what does not make sense to me is that you not only want 2,000 less positions, but that disregards the additional tightening of the border because of our drug problem, which has gotten more horrendous as the months have passed in the succeeding years.

How do you address this?

Mr. LANE. Well, over the last 2 or 3 years, we have put almost an additional thousand Customs officers, Customs enforcement officers, on our Southwest border as part of Operation Alliance. These include inspectors and special agents and pilots and intelligence and support personnel.

Mr. GUARINI. You put them on to Customs or you put them on the border?

Mr. LANE. We put them on to the Southwest border. Some of them were new hires.

Mr. GUARINI. And you took them from the other borders that are defending our country.

Mr. LANE. Yes, sir. We have, under the drug bill added something like 850 positions to Customs.

Mr. GUARINI. But as I understand it, you rearranged your personnel and you took the strength away from the other borders that we have in our country in order to tighten up the Southwest border. Is that a fair statement?

Mr. LANE. We have done a number of things in order to make those increases on the Southwest border. Some of them—and I would say it would be minimal—would be to move people out of less high-volume, high-risk ports down to the Southwest border. We have also done some streamlining of Customs functions, some consolidation efforts, centralization of administration, and automation efforts, and all of those things we have taken and placed on our number one narcotics priority, which has been the Southwest border. We did not take any of those out of the Southern Florida area, which is the other extremely high-risk narcotics entry point.

Mr. GUARINI. Well, in other words, we are doing considerably less than what Congress had directed last year in the omnibus drug bill. Is that true?

Mr. LANE. No, sir. I think at this point, if you do not take into consideration the 1988 budget, that we are doing at least what the Congress directed, and I would say substantially more by the internal improvements that we have made.

Mr. GUARINI. Well, you think that we have had success in stopping drugs at the border?

Mr. LANE. I think we have made substantial improvements in our system, and I think we have a structure that will enable us to do a much better job from now into the future. I do not think that we have come near to putting a real dent in the drug interdiction problem, but a lot of the assets that the Congress provided under the Anti-Drug Act are not on board yet. They are coming on board very rapidly, and it has been one of our major priorities to see that the resources that you have provided us do get there. A lot of those resources are air interdiction resources, and we could give you an accounting of what we have done so far and the results and payoff that we can deliver as a result of that.

Mr. GUARINI. Mike, what concerns me greatly is that you did point in your statement that we have got more and more seizures of cocaine, marijuana, heroine, but our information is that the amount of stuff that is coming through the border is far greater than it has ever been in these three drugs, and that there is more pure, cheaper drugs on our streets today than there were last year—which indicates that we are not succeeding in our endeavor. And I am just wondering where you have an uncontrolled border whether or not we are just living with the same hope that we have been given in past years.

I know it is an almost impossible problem when you have got 2,000 miles of unguarded border. It is almost an impossible task. But to take away 2,000 more U.S. Customs agents to me seems to be diminishing your attack on the problem.

I know you have got new equipment. By the same token, I was down there and I visited the border, and they were short-handed. Now, when you ask for 2,000 less positions, I just wonder whether or not we are serious about our attack on the drug problem and trying to tighten up our border.

Mr. LANE. Well, No. 1, Congressman, we are very serious about it. Second, we have to admit that there are more drugs coming in. And although the estimates are admittedly soft, we are doing, I think, a little bit better every year in terms of the amount that we are seizing against the threat. Unfortunately, much more is being produced, and we have had some very good crop years in the last couple of years.

But in my view, this fight or war on drugs has not really begun. In the next 2 years, Customs will have its air interdiction program fully operating on the Southwest border. Right now I think we operate at a level of effectiveness at something like 4 percent down there. So that is just an open door. What we do at the ports of entry or between the ports, at seaports, if they can fly right over, it is an open door. And with the Aerostats that were provided in the drug bill, with the additional equipment, and with the pilots that we will be putting on, I think our level of effectiveness, what we are predicting, is somewhere around 50 percent for that part of the border.

Mr. GUARINI. I agree that a lot will be done and that you will be able to put new equipment and track the planes and maybe have some hot pursuit—do things we could not have done before. However, when I have gone down to the border there, I see miles of traffic in the morning coming into the United States from Mexico, I see huge trucks of tomatoes and produce, which you only have an opportunity of just giving it a very cursory look into, where it does not come in by airplanes. You know the creativity of these people; they will find a lot of other ways it gets through so that it is almost an impossible task as to how to stop these drugs. If you stop them by air, they will come by sea or they will come by land. And I do not even know how you can with fewer Customs people inspect these large trailers of produce that are coming over as I am talking to you, because they just do not have time to go through the truck.

In fact, all they do, as I understand it, is just take a look at the last sack or two at the back of the truck, because it is too huge and too massive to even find a way. Our border is like a sieve, and it is not your fault. It is just that we are living with a very impossible situation.

Mr. **Lane**. Well, we do think it is our fault, and we are trying to take corrective action, particularly on the Southwest border. We have not had the capability, the facilities and, in some cases, I think we have had unfortunately poor performance along the Southwest border based on what we perceived as a decreased threat after the Mexicans did such a good job in the mid-1970s on the eradication and enforcement down there.

We have substantially improved our operations on the Southwest border, and we are just beginning. I think at the same time we have addressed some of the problems with the traffic down there regarding trucks and cars and pedestrians as well. Most of our new people are on board down there right now, and we are working very hard on a strategy for interdiction, particularly in commercial cargo and in perishable goods. The payoff for that is probably some months away, but I think we are going to do a better job there.

We have to agree with you that every time that we come up with a problem and start to get it in hand, the smugglers have the upper hand and can quickly adjust. And they have what appear to be almost unlimited assets because of the amount of money that there is in drug trafficking.

But I believe that at this point we have pretty much defined the methods of entry, the modes of entry, the sources, and that, if anything, we have a better potential with the assets that are coming on board for doing a better job than we ever have before.

Mr. **Guarini**. Well, I want to congratulate you and your men for a very valiant effort, but it seems to me sometimes like a swing of the windmill. I know how tough it is. When you are talking about $100 billion market in the United States, there is a tremendous amount of incentive to be very creative and resourceful on how to get these foreign source drugs into our country.

Let me change the subject matter for a while. How are you doing with the overtime problem?

Mr. **Lane**. We have no one right now that I know of that is exceeding the overtime cap. We do have a few requests, and I think one of them may be in the Bahamas. I am not sure.

We may go ask for an apportionment from OMB of something like 10 percent of our request for this year, but so far I do not think we really have a lot of overtime problems.

Mr. **Guarini**. Are you making those airplanes take the slots you want them to take, or do they take what they want to take? Do you have any assessment against them if they make—were we not discussing one time that if there was overtime, that it be played off against the airlines, that problem?

Mr. **Lane**. Well, the airlines were paying the fee, the overtime before. Now, it is included in the user fee. So it is the overtime that pays them.

We theoretically have the right to deny landing rights, and occasionally we do invoke that. But in reality, it is more of a negotiating process that the airline gets the route, and they have some hoops to go through with the Department of Transportation and FAA to get slots. We are sort of involved in that process, but by that time they are pretty much committed to what they are getting. There is a great deal of pressure on to give them the slots that they want.

Mr. **GUARINI**. You do not have any surcharge if they come in at difficult hours?

Mr. **LANE**. We have the right to deny the landing right.

Mr. **GUARINI**. Obviously, you will not do that if you have 150 passengers on board and people waiting to get home.

Mr. **LANE**. Well, on an individual basis, the problem becomes this: they wait. Sometimes they have had to wait on board the aircraft, and Customs usually is held responsible.

Mr. **GUARINI**. Yes, but you are only punishing our people who are traveling if you do it that way.

Mr. **LANE**. I recognize that.

Mr. **GUARINI**. Let me ask you, how much was overtime last year? Do you have a figure on that?

Mr. **LANE**. Well, I think total agencywide over $70 million. That is all kinds of overtime.

Mr. **GUARINI**. What percentage of that is over your budget?

Mr. **LANE**. Well, our budget was about $900 million.

Mr. **GUARINI**. So it is about 8 percent of your budget?

Mr. **LANE**. 7 or 8 percent.

Mr. **GUARINI**. That is a sizable sum yet, is it not?

Mr. **LANE**. Yes, sir.

Mr. **GUARINI**. Thank you. No further questions.

Chairman **GIBBONS**. Mr. Frenzel.

Mr. **FRENZEL**. What is your overtime cap now?

Mr. **LANE**. $25,000.

Mr. **FRENZEL**. $25,000 what? Dollars per employee?

Mr. **LANE**. Dollars per inspector.

Mr. **FRENZEL**. And as far as you know, you have not violated it?

Mr. **LANE**. No, sir.

Mr. **FRENZEL**. And yet you are running at about 10 percent of your actual salary outlays for overtime, if your estimate for 1986, $70 million, is correct.

Mr. **LANE**. To be safe, we think that we may need to ask for an apportionment on the overtime. I do not know that we are going to need it yet.

Mr. **GUARINI**. Would the gentlemen yield? How much is the salary of these inspectors? In other words, what is your gross that you pay?

Mr. **LANE**. $25,000 to $30,000.

Mr. **GUARINI**. No, I do not mean a person. Of the $70 million that we are paying overtime, what is the gross salary that is placed against?

Mr. **LANE**. Well, I guess it would be about $30,000 times about 4,700 inspectors.

Mr. **GUARINI**. You mean that is $150 million?

Chairman **GIBBONS**. Frank, we are going to have to leave in a second.

Mr. **GUARINI**. So we are paying $70 million overtime, against $150 million, roughly.

Mr. LANE. No, sir. Not all that overtime is for inspectors. That is administratively uncontrollable overtime that is paid to 2,000——

Mr. GUARINI. I was just asking what the payroll is that the $70 million played off against.

Mr. LANE. Well, it is about 15,000 employees.

Mr. GUARINI. So how much of that comes from the payroll?

[Pause.]

Chairman GIBBONS. We are going to have to adjourn. There is an amendment. That is the second bell, and we will be right back.

Mr. FRENZEL. If I might ask while we are leaving, because I am not going to be able to come back, can you tell us what proportion of freight or shipments are actually subjected to physical inspection?

Mr. LANE. Approximately 20 percent gets some form of inspection.

Mr. FRENZEL. Twenty percent of what?

Mr. LANE. Of the cargo that enters the United States.

Mr. FRENZEL. You are kidding. How many containers do you open out of every hundred that come across the docks?

Mr. LANE. Container traffic?

Mr. FRENZEL. One in a thousand?

Mr. LANE. No, sir. About 2.9 percent.

Mr. FRENZEL. Okay. Thank you.

[Recess.]

Chairman GIBBONS. The subcommittee will come to order.

Let's see. Mr. Guarini had some figures he was asking for, and he asked me to write them down for him because he was not going to be able to get back. So, if you will just talk slowly because I write slowly——

Mr. LANE. We will be real slow, Congressman.

Chairman GIBBONS. Okay. Go right ahead.

Mr. LANE. I think that our salaries are somewhere around $400 million. For inspection and control, which is where the bulk of the overtime is, and where the carriers and the importing public are concerned, the salaries are about $340 million.

Chairman GIBBONS. All right.

Mr. LANE. Well, that is for the total program, which is primarily salaries.

Chairman GIBBONS. I think he was trying to figure out what percent overtime was of those salaries. Wasn't that what he was trying to figure out?

Mr. LANE. I think that might be what he was getting at. So, if those salaries were around $340 million, it is going to be somewhat less than that, I think. The overtime is about $55 million for inspectors.

The remainder of that overtime, the total overtime for the agency, is around $70 million, but the remainder of that is for noninspectional personnel.

Chairman GIBBONS. Okay. Well, fine. Thank you very much. There are some questions that we will be submitting in writing, Mr. Crane has some, and I have some, and unless there is something else you want to add, that is all that we have got for you today.

Mr. LANE. No, sir. Thank you, Mr. Chairman.

Chairman **Gibbons**. Yes, sir. Tell those folks over at OMB how highly I think of them, would you, please.

Mr. **Lane**. Yes, I will.

[The following was subsequently received:]

TREASURY U.S. CUSTOMS SERVICE

ASSOCIATE COMMISSIONER
WASHINGTON

June 3, 1987

The Honorable
Sam M. Gibbons
Chairman, Trade Subcommittee
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Chairman Gibbons:

Enclosed herein are answers to the written questions you presented to Customs at the May 12, 1987, International Trade Subcommittee hearing on the Customs budget authorization.

Should you have any further questions on Customs operations, don't hesitate to call be at 566-5644.

Sincerely

Charles R. Parkinson

Enclosure

QUESTION: What is the percentage increase in the volume of entries in recent years? In merchandise? In passengers?

ANSWER: The percentage increases for the three-years' growth from FY 1983 through FY 1986 were 36.3% for Formal Entries, 48.0% in Value of Imports, and 6.3% in Total Persons. The details are as follows:

THREE-YEARS' GROWTH, FY 1983 - 1986

					AVERAGE GROWTH	
	FY 83	FY 84	FY 85	FY 86	3-YR	1-YR
Formal Entries (Millions)	5.369	6.495	6.894	7.320		
Percent Chg.............		20.97%	6.14%	6.18%	36.3%	10.9%
Imports for Consumption ($Billions)	$245.7	$314.0	$333.5	$363.7		
Percent Chg.............		27.80%	6.21%	9.06%	48.0%	14.0%
Total Persons Arriving: (Millions)	285.683	289.805	291.487	303.610		
Percent Chg.............		1.44%	0.58%	4.16%	6.3%	2.0%
Air	29.751	32.556	33.804	33.420		
% Change.............		9.43%	3.83%	-1.14%	12.3%	4.0%
Land	251.902	253.284	253.164	265.451		
% Change.............		0.55%	-0.05%	4.85%	5.4%	1.8%
Sea	4.030	3.965	4.519	4.739		
% Change.............		-1.61%	13.97%	4.87%	17.6%	5.6%

Percent Change = from previous year only.
AVERAGE 1-YR GROWTH = compound rate

Source: CUSTOMS PERFORMANCE REPORT (Tables M-1 Formal Entries, M-5 Air Persons, M-6 Land Persons, M-7 Sea Persons)

FT 990, Table 1 Imports for Consumption, Customs Valuation

FY 1988 STAFFING

QUESTION: Your budget request would require a reduction in personnel of nearly 2,000 employees. How and where would such a cut occur?

ANSWER: Because the proposed FY 1987 rescission was not approved, a reduction of 2,000 employees would be required to meet our proposed FY 1988 budget. A reduction of this size in a single year would have to be accomplished through a combination of attrition and a reduction in force and would most likely affect all program areas. However, we would attempt to protect our priority drug and other law enforcement programs as much as possible.

FY 1987 PROGRAM LEVELS

QUESTION: Under the revised request (i.e., without the FY 1987 rescission), exactly what additional funds would be needed to maintain current levels? How much is allocated to the air interdiction program and to the EXODUS export enforcement program?

ANSWER: At the FY 1987 Salaries and Expenses level of $830,120,000 and 15,037 FTE, an additional $77,072,000 would be required to maintain a current services level of $907,192,000. The $170,950,000 appropriated by Congress for Operations and Maintenance in FY 1987 has been allocated. In addition to funds provided for the Air Program under the Operations and Maintenance appropriation, $23.6 million is allocated from the Salaries and Expenses appropriation to support Air Program personnel.

For Air Operations and Maintenance, $86,210,000 has been requested in new budget authority in FY 1988. The original intention had been to provide $118,309,000 in FY 1988 by delaying $32,099,000 from FY 1987. This $32,099,000 has now been allocated in FY 1987.

In FY 1987, $13 million has been allocated for the EXODUS export enforcement program.

USER FEES

QUESTION: What are the total revenues, by month, realized from Customs user fees today? How does this break down between passenger-type fees and ad valorem processing fees? What are the anticipated revenues from such fees for the remainder of FY 1987?

ANSWER: For FY 1987, Customs has received a total of $335 million in user fees. Average monthly receipts in the Customs User Fee Account since October 1, 1986, have approximated $44.6 million. Average monthly, passenger related fees are $9 million and average monthly ad valorem related fees are $48.5 million. Customs began collecting the ad valorem processing fees on December 1, 1986. For the remainder of FY 1987, we anticipate an additional $24 million in passenger related fees for a total of $92 million. Similarly, we expect to collect an additional $244 million in ad valorem related fees this year for a total of $511 million.

QUESTION: Why have you chosen not to request use of this account in FY 1987? What role did OMB have in this decision?

ANSWER: At the time the FY 1988 Budget request was prepared, there was considerable uncertainty on the amount of funds the fees would generate. The primary problem impacting any projection of fee collections was the exemption granted to Schedule 8 imports, which include merchandise produced domestically, then exported and then re-imported. Under the Omnibus Budget Reconciliation Act of 1986, these imports or any import which includes any of these American made goods, are exempt from the fee. As an example, a foreign made automobile could be made exempt from the fee by incorporating some Amercian made parts.

Before the enactment of the fees, Schedule 8 imports were estimated to be about 10 percent of all imports. However, with the imposition of a fee, there was a potential for significant conversion from regular imports, for which a fee is payable, to Schedule 8 imports, exempted from the fee. It has been estimated that this conversion could potentially reduce fee totals by almost $200 million. Therefore, it was decided to request an apporopriation for FY 1988 rather than FY 1987.

OVERTIME

Question:	We have received a number of complaints about Customs' handling of overtime since the implementation of Customs user fees. Please explain how overtime is now being handled.
Answer :	Our basic policy with regard to the approval of overtime requests has not changed as a result of user fees. We have, however, exercised caution in granting new overtime requests since implementation of the user fee for two reasons. First, we must consider the statutory overtime cap of $25,000 per employee; and second, we must insure that user fee receipts will be sufficient to cover increased expenditures.

COMMERCIAL OPERATIONS

QUESTION: What level of funding would be necessary to maintain existing commerical operations? What levels would be needed to significantly improve commercial operations?

ANSWER: The level of funding required for maintaining existing staffing levels for commercial operations in FY 1988 is $559 million. This will provide the same level of service to the importing community as provided in FY 1987.

The level of funding required for improved service for commercial operations for FY 1988 would be any amount in excess of $559 million.

OVERTIME INSPECTIONAL SERVICES

Question: Since the statute providing for Customs user fees clearly provides for the secretary to refund out of the Customs user fee account expenses incurred for overtime inspectional services, why has Customs found it necessary to refuse to provide overtime inspectional services for budgetary reasons?

Answer : There is a perception that we are refusing overtime services for budgeting reasons but, in fact, it is not a budget problem. Our internal administrative procedures, established when most overtime was directly reimbursable by a party in interest, have proven ineffective in dealing with the new requests as a result of the user fees. In the past reimbursable overtime requests remained relatively stable from year to year. We are experiencing significant increases at some locations as a result of the free service provisions of the user fee statute.

A local Customs manager may not have sufficient funds available to respond positively to new requests. This does not mean, however, that funds are not available within Customs to support these requests. I am not aware of any overtime denials based on insufficient funds, only delays in the reallocation of funds to support the numerous requests.

As we gain experience in operating under the new user fee statute, we will develop new procedures which will allow us to respond to new overtime requests in a more efficient manner.

Question: What criteria does Customs currently use for granting overtime requests?

Answer : There are numerous and varied criteria used in the evaluation of overtime requests but the basic areas include: the availability of manpower; consideration for the $25,000 overtime cap; and the sufficiency of user fee receipts.

AD VALOREM FEE

QUESTION: What level of ad valorem user fee would be necessary under the present statute to generate sufficient revenues to fund Customs commercial operations?

ANSWER : The Omnibus Budget Reconciliation Act of 1986 mandated that a .17 percent ad valorem fee be collected in FY 1988. This .17 percent fee, along with the funds that accumulated in the user fee account during FY 1987, wil be sufficient revenue to fund commercial operations in FY 1988.

REGULATORY CHANGES TO REDEFINE FRAUD

QUESTION: What is the status of the proposed regulatory changes to re-define "fraud"? Will it be consistent with distinctions between fraud and negligence as mandated by this Committee?

ANSWER: In light of the Committee's concerns in connection with the Scofflaw provisions in H.R. 3, the Customs Service has decided to hold in abeyance any further action on the proposed amendment to the definition of fraud, until action is taken on that provision.

The Customs Service, however, believes that the distinction between fraud and gross negligence *will be retained* under the proposed amendment to the definition of fraud. Under the proposed amendment to the definition of fraud, Customs still will be required to establish by clear and convincing evidence that *at the time of the import transaction involved*, the violator knew either that a material false statement was made, that a material omission occurred or that a material false act was committed.

Thus, Customs proposed definition will not embrace the full extent of the current trend in the case law on civil fraud, which is to recognize that the "scienter" (i.e., intent) required for the civil fraud actions may be established by a showing of "reckless conduct" or "gross negligence", on the part of the person charged. Customs agrees that the adoption of such a standard for establishing fraud, in effect, would eliminate gross negligence as a distinct degree of culpability under section 1592.

On the other hand, Customs believes that fraud can be established by clear and convincing evidence that the false statement was made to Customs with knowledge of its falsity. From such facts, "the requisite intent to defraud is presumed". *See* *Pence v. United States*, 316 U.S. 332, 339 (1942).

VOLUNTARY DISCLOSURES OF CUSTOMS VIOLATIONS

QUESTION: Please review Customs policy regarding "voluntary disclosures" of Customs violations. Has the Service rejected such disclosures due to de minimus technical errors, thereby resulting in full penalties being assessed?

ANSWER: It is not the policy of the Customs Service to reject claims for prior disclosures under 19 U.S.C. 1592, for "de minimus technical errors". The Customs Service Headquarters is not aware of denial of prior disclosure treatment on technical grounds such as a mis-statement concerning the identities of the Customs entries involved in the violation (required under 19 CFR 162.71(e)(2)), or the failure to tender along with the disclosure, the full amount of the actual loss of duties resulting from the violation (required under 19 CFR 162.74(a)). Any such defect, in itself will not result in the denial of prior disclosure. Indeed, concerning the requirement that the prior disclosure be made in writing, it is provided explicitly in the Customs Regulations (19 CFR 162.74(a)(2)) that this may be waived for purposes of according a person the full benefit of prior disclosure treatment, if the district director is satisfied that the information provided is substantially complete and was made before or without knowledge of the commencement of a formal investigation.

OMNIBUS DRUG LEGISLATION

Question: Is Customs using the authority granted under the omnibus drug legislation to impede or control commercial shipments?

Answer : Commercial shipments are not being impeded as a result of this authority granted to Customs. Further, the controls used for commerical cargo shipments have not changed.

The drug bill did increase the penalty provisions for commercial carriers when unmanifested drugs are discovered and an internal conspiracy is evident. However, this does not affect our handling of the commercial cargo aboard the conveyance.

MAJOR RULE CHANGES

QUESTION: The importing community has complained to the Subcommittee about a lack of procedural due process in the issuance of major rule changes without sufficient notice and opportunity for comment. What is Customs policy and practice regarding both regulatory and policy changes?

ANSWER: In accordance with the Administrative Procedures Act (5 U.S.C. 551 *et seq.*), the Customs Service makes extensive use of the Federal Register to publish documents setting forth proposed actions and inviting public comments for consideration before any final action is taken on a proposal. In addition to publishing notices of proposed rulemaking regarding changes to the Customs Regulations contained in title 19, Code of Federal Regulations, Chapter I, Customs routinely publishes for comment notices concerning proposed changes in (1) tariff classification and appraisement, (2) country-of-origin marking requirements, (3) interpretive rules, (4) the Customs field organization, and (5) other matters relating to policy and/or procedures.

Very few documents that are published are mandated by law. In most instances a decision must be made as to the affect or impact of the proposal, *i.e.* will it take away any right that a person now has or will it create any new obligations or duty on the public. If so, or if it could have an adverse impact on the public, we publish a notice of proposed action and invite public comments. In some instances we must decide if any purpose would be served by asking for comments from the public; if they will help to resolve a problem, we invite them by a Federal Register notice. If no purpose would be served by asking for comments and no person would be adversely affected, or we are under a court order or Congressional mandate, we publish a final rule document without inviting public comment.

Over the past several years, Customs has gone to great lengths to invite public comments on many issues that were regarded as "controversial" or "sensitive". In 1985, Customs published 32 notices of proposed action, in 1986, 29 such notices, and so far in 1987, we have published 8. We will continue to review each matter and to make every effort to use the Federal Register as a means of obtaining meaningful public comment before taking any final action.

It should be noted that even though we are not required to do so, every document that is published in the Federal Register is also published in the Customs Bulletin and Decisions, a weekly pamphlet printed by the GPO and made available to all segments of the importing and exporting public. In addition, proposals are routinely discussed with representatives of affected public segments at our regular meetings with industry associations such as the American Association of Exporters and Importers, the National Customs Brokers and Forwarders Association, the Northern Border Brokers Association and other trade related groups.

Customs policy and practice regarding both regulatory and policy changes is to adhere strictly to the provisions of the Administrative Procedures Act and all other applicable laws and directives.

AUTOMATED COMMERCIAL SYSTEM

QUESTION: What is the exact schedule for full implementation of the Automated Commercial System (ACS)? What percent of entries are now covered by this and by the Automated Broker Interface (ABI) system?

ANSWER : The attached chart shows a detailed implementation timetable for ACS.

At the present time, there are 115 operational participants in ABI handling over 30 percent of all entry volume. Cargo Selectivity is now available in 65 locations, handling 40 percent of total volume. The Automated Manifest System (AMS) currently handles 10 percent of the bills of lading.

A detailed implementation timetable is furnished in the chart showd below:

AUTOMATED COMMERCIAL SYSTEM TIMETABLE: 1986-1988

Item	March 1986	March 1987	March 1988 Projections
1. ABI Operations			
-Operational Clients	20	90	150
-Testing	30	110	125
-In Development	60	115	125
Totals	110	315	400
-Software suppliers, service bureaus, port authorities	15	35	45
-% ABI volume to total Customs	20%	30%	45%
2. Total Customs entry volume	7.3 million/year	7.5 million/year	7.8 million/year
3. System Transactions	290,000/day	530,000/day	650,000/day
4. System Functions (ACS)	Collections, liquidations Entry summary processing ABI, daily statements Automated TSUSA Bond processing Fines, Penalties, Forfeitures In-bond operations	Enhanced collections User fees Enhanced ABI Census Interface Cargo selectivity Quota integration Line Release New Entry Number Drawback processing Improved bond processing Cargo release through ABI Border release (3461 Alt with bar codes) Automated Manifest(sea) Foreign-manufacturer code Automated exam instructions	Enhanced ABI with quota query Entry summary selectivity Paperless entry summary Warehouse, FTZ processing Harmonized system Periodic payment Automated manifest-air Census interface-nationwide deployment Foreign currency conversion Surety (bond) interface

GAO REPORT

QUESTION: A recent GAO report concluded that processing and examination of cargo imports were deficient in a number of respects, including inadequate examination and lack of verification of quantity as declared by the importer. What is Customs doing to address the issues GAO raised in their report? What percentage of merchandise is presently bypassed?

ANSWER: We have been working in a variety of areas to address the issues GAO raised in their report. As recommended, I will improve upon specific policies and procedures for inspectors to use for determining the intensity of cargo examinations. The degree of intensity will be based on the risk of the shipment and the purpose of the examination. The specific actions we have taken to enhance the quality of inspectional examinations include:

- Continued development of our Automated Commercial System (ACS) to improve productivity and enforcement.
- Expansion of a refined selectivity system known as Tier II to identify high risk shipments.
- Expansion of the Automated Broker Interface (ABI) program to free inspectional personnel for examinations.
- Further implementation of the Automated Manifest System (AMS) which allows us to screen manifests prior to arrival of a vessel.
- Expansion of the Centralized Examination Station program designed to improve the quality of examinations.
- The design and development of a prototype port where the most innovative and progressive cargo procressing techniques can be used. New Orleans is the site selected for this endeavor.

In answer to your second question, no merchandise is bypassed. I would add, however, that it is not feasible to physically examine all imported cargo. In 100 percent of the cases entry documentation is reviewed to determine if the shipment presents a risk.

Twenty percent of the imported cargo is physically examined. Our selectivity module of ACS contains sufficient information for us to select those shipments for examination which pose a potential risk, while assessing compliance with our agency regulations.

Cargo which is determined to be low risk is examined randomly to ensure the accuracy of the selectivity criteria.

COMMERCIAL FRAUD

QUESTION: Discuss Customs commercial fraud efforts, quota evasion, and country of origin marking enforcement.

ANSWER: With respect to the commitment of Customs commercial fraud efforts in enforcing United States trade laws, particularly evasion of quotas and violations of marking laws, we would like to emphasize that every part of Customs is totally dedicated to aggressive and swift enforcement of violations encountered. Customs has utilized every enforcement tool available to ensure that all imported merchandise complies with the requirements.

The results of our fraud enforcement program in recent years have been impressive. There has been a substantial increase in the number of fraud cases initiated, investigated, and finalized. There has been an impressive increase in the number of criminal convictions - 22 in FY 82 compared to 88 in FY 86. At the same time, there has been a steady increase in civil recoveries as evidenced by the number and dollar value of penalties and forfeitures issued. In one specific commodity area, textiles, seizures for the first half of FY 87 have surpassed, in value, those for all of FY 86.

In FY 86, over 182 man years were invested to counter fraud activities - up from 129 man years in FY 85. Since November 1986, additional resources have been allocated to the investigation of commercial import violations. The improved results are not only the result of the use of additional personnel, but they are also attributable to the improved targeting techniques and better cooperation between the disciplines available here in Customs, namely Import Specialists, Special Agents, and Customs Inspectors.

EVASION OF QUOTAS

Schemes used to avoid our negotiated quota limits include transshipment/false country of origin, misdescription, understated quantities, forged visa documents, etc.

Transshipment/False Country of Origin

Examples of our current or recent efforts in the transshipment area include investigations conducted by our offices in Tokyo, Los Angeles, and New York which have substantiated the transshipment of millions of yards of Korean-produced polyester through Japan to the United States. These investigations (still current) have shown the active participation of numerous Japanese firms in the transshipment schemes.

In another investigation, Eagle Eye Ltd., a U.S. corporation, and Eagle Eye of Hong Kong conspired to import sweaters and other textile articles into the United States falsely marked as Japanese goods, when, in fact, they were from Hong Kong and the People's Republic of China.

In July of 1986, the two companies were convicted of four criminal felonies, four misdemeanors, and were sentenced to criminal fines totalling $40,000. In addition, it was stipulated that all civil penalties assessed by Customs be paid. These total some $384,000.

Misdescription

One example of this practice is reflected by the criminal settlement in Just for You Apparel Ltd., which had been found guilty of misdescribing wearing apparel to avoid tight quota limits as well as undervaluing the merchandise. The company, its corporate secretary, and its foreign buyer were found guilty of multiple felonies and paid a total of $45,000 in criminal fines and $11,533.50 in restitution. A demand for duties in excess of $1.5 million has been issued to the corporation and various surety companies. Civil penalty action is still underway.

Understated Quantities

We have current ongoing cases relevant to wool hats from Korea in which this practice has apparently been utilized to circumvent quantity restraints and at the same time avoid payment of lawful duties. The majority of our textile and apparel products which were falsified as to the actual quantity.

Forged Visa Documents

In 1982, there developed a problem with forged Taiwanese textile visas. This problem was ultimately solved through implementation of an Automated Visa Verification System (AVVS). We are just now encountering an incidence of counterfeit People's Republic of China (PRC) textile visas. Presently, we have established contact with the Embassy of the PRC to confirm the forged status of the visas, and the Senior Customs Representative, Hong Kong, is investigating.

VIOLATIONS OF MARKING LAWS

Customs commitment to enforcing country of origin marking can be illustrated by our 1986 Country of Origin Marking Initiative which designated target commodities during four phases of 1986. These target commodities were intensively examined to check for compliance with the country of origin requirements. The results of this initiative demonstrated that the target commodities had an average violation rate of 17 percent. We are continuing our priority enforcement of marking requirements by extending this initiative throughout 1987.

In addition, we work closely with the various domestic industries affected by imports, and we have developed specific training courses on marking requirements at our U.S. Customs Academy located at the Federal Law Enforcement Training Center.

QUESTION:	What specifically is Customs doing to detect circumvention of antidumping and countervailing duty orders and voluntary restraint agreements?
ANSWER:	We have continually adapted to changes in the methods by which unscrupulous traders and importers have sought to defraud our trade policies. Whereas, at one time, our examination and investigative efforts were largely concentrated on schemes to avoid payment of duties, we have now targeted our efforts against ever evolving schemes to circumvent changing methods of regulating imports.

Our national steel fraud importation program is an excellent example. The worldwide steel manufacturing glut of the late 1970's and early 1980's provided a powerful temptation to sell various steel products to the United States at less than fair market value. In response, the Department of Commerce instituted the "Trigger Price Mechanism" (TPM) as a method of monitoring the possible dumping of these products. As a result, several unscrupulous exporters and importers developed schemes to evade the TPM by overvaluating and misdescribing steel products.

Customs responded by initiating a renewed multidisciplined approach, utilizing Import Specialists, Inspectors, and Special Agents in closely coordinated efforts.

Currently, our most successful fraud efforts have been in the area of antidumping/countervailing duty evasion. Mitsui, Daewoo, and other steel importers have been detected circumventing the TPM. Mitsui has paid over $11 million in penalties. Daewoo may pay more.

M.B.I. Industries plead guilty to 18 U.S.C. 542 and 18 U.S.C. 2 in the Judicial District of New Jersey, for transshipping magnetic photo albums from Korea through Taiwan and the PRC in order to avoid the antidumping duties of 64.81 percent. Civil violations were calculated to be approximately $1,000,000 which also included the marking violations as to false country of origin.

In addition, there is a criminal investigation underway and an arrest made in a scheme to evade the antidumping duties on imported pistachio nuts grown in Iran.

The Customs Service enforces the Voluntary Restraint Agreements (VRAs) by checking the validity of the Export Certificate at the time of entry and promptly transmits the document to International Trade Agreements, Department of Commerce, and by aggressively detecting, investigating, and prosecuting attempts to evade the VRAs. As the VRAs are quantitative restraints, we have found instances where the quantities have been understated on the import documentation. Several seizures have been made as a result of this scheme.

At present, we have several ongoing cases and operations involving alleged attempts to circumvent VRAs through transshipment.

HARMONIZED SYSTEM

QUESTION:	What specific steps is Customs taking to prepare for the 1988 transition to the Harmonized System?
ANSWER:	Within the U.S. Customs Service, we have already trained our import specialist supervisors, and team leaders - the primary field personnel responsible for determining classification of merchandise and approximate duty rates - in the principles and organization of the Harmonized System (HS). By July, we will have trained an additional forty instructors to assist in training all our remaining import specialists and many personnel from other disciplines as well. By that time, we will also have developed the curriculum for inspector training and will be beginning local courses for inspectional and mail program personnel. Our personnel already have copies of the latest HS conversion and will soon have the additional guidance of the Explanatory Notes. Since late last year, Customs has been revising regulations and publications to reflect changes required under the HS and we expect to have our Automated Commercial System database design and maintenance programs converted to accept HS codes and descriptions by July. Our ongoing efforts to convert the remaining automated programs affected by the HS conversion is scheduled for completion by September 1. Our national import specialists and classification and value attorneys have been including advisory rulings on HS classifications for all decisions issued since October 1986. We will begin responding to requests for binding rulings as soon as the legislated version of the tariff is passed -hopefully, well in advance of the end of 1987. In addition, we are proceeding with development of an automated rulings database to assist local import specialists as a reference and to be available commercially as well by early 1988. To help educate the importing public and prepare them for the change, we prepared a brief videotape presentation for our local managers to present to business groups, alerting them to the potential impacts of the change on their businesses. The National Chamber of Commerce is assisting us in

distributing information to small businesses not close to a Customs district office. Since October, we have been averaging 500-600 requests per month for our technical analysis of HS provisions compared to the current TSUSA - the Harmonized System Handbook. We have also worked with a number of private international trade associations to develop HS orientation seminars for the trading community. Finally, in conjunction with the National Customs Brokers and Freight Forwarders Association we have designed a 3-day HS training seminar for Customhouse brokers and other entry filers. The pilot 3-day course was given the first week of May. Thirty seminars for approximately 2500 participants are scheduled in twenty cities between July and December.

SURETY ON CUSTOMS BONDS

QUESTION: In late 1982, the Customs Service published in the Federal Register an Advanced Notice of Proposed Rulemaking to eliminate corporate surety for all Customs bonds except those expressly required by statute. What is the status of the elimination of surety project?

ANSWER: On October 14, 1983, Customs published a notice in the Federal Register (48 FR 46805) which requested comments on whether a surety was needed on a Customs bond in every instance. The change was being considered because the additional security of a surety appeared in many cases to be unnecessary. Further, the increased costs of premiums, which are ultimately passed on to the consumer, may not be warranted in view of the minimal potential risks to the revenue of the U.S.

Because of the widespread interest in the matter and the significant effect it would have on all aspects of the importing community, Customs determined that a public hearing should be held. By notice published in the Federal Register on February 13, 1984 (49 FR 5950), the public was invited to attend the hearing to be held at the Customs Headquarters in Washington, D.C. on April 10, 1984. The hearing was held on that date and representatives of many segments of the importing community made presentations.

After further review of the matter it was determined that no further action should be taken to eliminate the surety on Customs bonds; the project was therefore terminated.

QUESTION: Would Customs share with this Subcommittee the information and analysis thereof relating to the elimination of surety project?

ANSWER: As stated with respect to the previous question, Customs determined not to eliminate sureties for bonds. The numerous comments received in response to the Federal Register notice and a transcript of the public hearing held on this issue are available for public inspection.

DELINQUENT DUTIES

QUESTION: What rate of interest does the Customs Service charge for failure to deposit the required estimated duties?

ANSWER : The Customs Service does not charge interest for the underpayment or late payent of estimated duties. Further, no payments of interest are made by Customs to importers that overpay estimated duties. However, penalties in accordance with applicable statutes and bonding contracts are assessed for failure to pay estimated duties.

QUESTION: Is that rate of interest different from the rate of interest Customs charges on the increased or additional duties? If so, under what authority does Customs assess the rate of interest for failure to deposit the required estimated duties?

ANSWER : No interest is charged on late payment or underpayment of estimated duties.

Chairman **Gibbons**. Somebody ought to let them live with their budget request. You know.

The National Treasury Employees Union. Mr. Tobias.

Before you start, let me put into the record a letter from the State Department.

I think perhaps we ought to make a copy of that and send it to all the Members. Make sure that they get it.

[The letter follows:]

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MAY 11 1987

SUBCOMMITTEE ON TRADE

United States Department of State

Washington, D.C. 20520

MAY 11 1987

Dear Mr. Chairman:

As you know, on March 30, 1987 the Senate passed and sent to the House S. 829, a bill to authorize appropriations for the U.S. International Trade Commission, Customs Service and the Office of the United States Trade Representative.

There are two specific sections of the bill on which the Department wishes to comment. These are the sections dealing with the Customs user fee and the prohibition on the importation of articles from the Soviet Union which may have been made by forced labor.

The Department of State strongly objects to Section 5 of S. 829. This section would prohibit the importation of all gold ore, agricultural machinery, tractor generators, tea, crude petroleum, motor fuel and kerosene from the U.S.S.R. on the grounds that these products may have been produced, wholly or in part, by convict, forced or indentured labor. These items could only be imported into the United States if the President submits a written statement to the Congress which confirms that the items are not being produced, wholly or in part, by such labor or that they are needed for national security purposes.

The Department of State believes there is no factual basis for the punitive steps contained in Section 5. To the best of our knowledge, the evidence available to the U.S. Government does not establish a connection between Soviet forced labor practices and specific imports from the Soviet Union. Moreover, we are not aware of any new evidence which contradicts this finding. To the extent that adequate information is available, products produced by such labor are already subject to exclusion under current legislation and regulations.

The Honorable
Dan Rostenkowski, Chairman,
Committee on Ways and Means,
House of Representatives.

The products listed in Section 5 represent a substantial portion of Soviet exports to the U.S. Closing the U.S. markets to these goods would have serious political as well as economic repercussions. Gold alone represented nearly fifty percent of all Soviet exports to the U.S. in 1986. It is certain that the U.S.S.R. would respond to a ban on these imports with matching restrictions on U.S. exports to the U.S.S.R., including inter alia, restrictions on our sizeable sales of agricultural commodities. Moreover, such a unilateral U.S. ban would unnecessarily threaten our broader political relationship.

The Department of State shares the concerns of those repelled by the Soviet forced labor system and has strongly condemned Soviet prisons and especially the incarceration of political prisoners. Prohibitions such as those in Section 5 do not further the United States' objective to improve Soviet human rights practices. On the contrary, such restrictions only serve to limit our influence over Soviet behavior without affording a corresponding benefit to U.S. interests.

With respect to Section 4, the State Department wishes to confirm our view that the user fee is consistent with the GATT to extent that the fee is limited in amount to the approximate cost of services rendered and was not represent an indirect protection of domestic producers or taxation of imports for fiscal purposes. Earmarking the funds generated by the customs user fee to pay the cost of services rendered would be most appropriate to ensure GATT consistency. In that connection the administration has proposed as part of its comprehensive competitiveness initiative, the "Trade, Employment and Productivity Act of 1987," to permit the Treasury Secretary to prescribe and collect customs user fees in certain situations. This initiative is described in greater detail in the Treasury's report to you on S. 829, which you received, or should receive shortly.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

With best wishes,

Sincerely,

J. Edward Fox

J. Edward Fox
Assistant Secretary
Legislative and Intergovernmental Affairs

Chairman GIBBONS. Go right ahead, Mr. Tobias.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. TOBIAS. Thank you very much, Mr. Chairman. I am very pleased to be here to talk about the U.S. Customs Service. We think that, contrary to what Mr. Lane said, this is an agency that is in crisis.

First this administration seeks to cut the number of positions in the U.S. Customs Service every single year. For example, the 1988 budget proposal would staff the U.S. Customs Service at 37 fewer positions than the Customs Service had in 1975.

Notwithstanding the increase in trade, notwithstanding the increase in the number of passengers, this budget would staff it at 37 fewer than the Customs Service had in 1975.

I was also interested to note in Mr. Lane's testimony, that the Customs Service is currently 500 short of the congressionally mandated 14,981 positions in the continuing resolution for 1987.

Chairman GIBBONS. How many? 500 short?

Mr. TOBIAS. Approximately 500 short. They have not filled the positions that were mandated. Congress of course took the extraordinary position of mandating a minimum staffing level, and they are 500 short. Now the administration's proposal was made, notwithstanding the fact that since 1980, the number of entries have increased by 74 percent, and workload, as measured by formal entries per cargo position, rose 102 percent during the same period.

Chairman GIBBONS. You are talking about in dollar?

Mr. TOBIAS. The number of formal entries per position.

Chairman GIBBONS. Yes. Oh, the number of formal entries. I got you.

Mr. TOBIAS. The number of formal entries per process, per position, has increased 102 percent since 1980.

Chairman GIBBONS. And that is the number of entries. That is not in dollars.

Mr. TOBIAS. No, sir; no, sir. The number of entries. And I disagree vehemently with Mr. Lane who said that if this administration's proposal were to take effect, that the 2,000 positions could be taken care of through attrition. We would be RIFing the same people that we have been hiring this year, and training this year.

It is certainly our position that the Customs Service cannot perform its function with the budget proposed by this administration.

I also disagree with Mr. Lane, that the automated systems that have been put into place and designed to assist the Customs Service would allow for this reduction. They have not increased the efficiency, and most importantly, they have not increased the compliance.

What Mr. Lane did not talk about is the morale of the U.S. Customs Service which I, based on my conversations, and my travels, is abysmal.

We have people who have been dedicated Customs employees, and yet, they are not able to do the job they can do and ought to do.

And we also have commercial fraud increasing each year. It is estimated that $36.8 billion in 1985, $38.5 billion in 1987, and an estimated $39 billion in 1988.

In 1983, 50 percent of the entries were bypassed. This year, 65 percent of the entries will be passed, and a majority of those entries are dutiable entries, and nearly 70 percent are left to the brokers for classification and duty computation.

We are losing an ever-increasing amount of revenue; $3 to $5 billion in lost Customs revenue, $19 billion in lost sales, $8 to $12 billion in lost GNP, 500,000 in lost jobs, and somewhere between $1.5 and $2.2 billion in lost Federal taxes.

So this truly is an agency in crisis.

Chairman GIBBONS. Is there any other agency in the Government that they play with like this, through your activities? Have you heard of any that——

Mr. TOBIAS. Well, until 19——

Chairman GIBBONS. It is a small agency, and they have cut it so heavily, to me, it looks like a game.

Mr. TOBIAS. Well, I agree with you, Mr. Chairman, and this administration did the same thing to the Internal Revenue Service which we also represented——

Chairman GIBBONS. Yes, I know.

Mr. TOBIAS. Until 1985, when taxpayers could not get their refunds. So there was such a large outpouring of criticism, that the administration has now started to deal with the problem in the Internal Revenue Service, but as you point out, is still playing games with the U.S. Customs Service, another revenue-producing agency.

As a solution, Mr. Chairman, we urge that Congress mandate a restoration of the positions sought to be cut, and in addition, we urge that this Congress add an additional 2,000 positions to enhance commercial operations in 1988.

The cost of the enhancement would be $150 million. It would produce revenue of $1.3 billion in 1988, and $1.4 billion every year thereafter.

This could be financed by appropriating money from the Customs user fee account, which is expected to reach $1.4 billion in 1988.

The goal of the fund was to increase the service in commercial operations, and to increase compliance, but without an appropriation from Congress, without an appropriation from the fund, the amount will be reduced in 1989.

The approach that I am suggesting is consistent with the approach Senators DeConcini and Domenici recommended to Senator Bentsen, the chair of the Finance Committee.

Equally as important, we recommend that Congress mandate the U.S. Customs Service to put together a 5-year plan. All too often the Customs Service has been subject to the whim and the caprice of the 1-year process.

I believe Congress, in its responsibility, ought know what the Customs is planning to do, ought to be involved in the process of determining what it ought to do, and then hold them accountable.

And this can only be done if the Customs Service is required to put together a management plan for the future. And I also urge that this Congress take the unprecedented step of taking away

OMB's authority to direct Customs to rescind, defer, absorb, or apportion Customs' appropriations.

OMB has attempted to thwart the congressional will for years. This gamesmanship you mentioned started in 1981. Congress has authorized and appropriated positions because it believes it is imperative that the Customs Service perform its function, and OMB then withholds the funds, and Customs ends up with fewer positions.

And even when Congress directed in statutory language last year, that Customs must have a minimum staffing level of 14,891 positions, OMB stepped in, slowed down the process, and it looks like the number will not be met by the end of this year.

But it is not just in filling the positions that OMB attempts to ignore congressional will. In 1985, Congress created a user fee program with the funds deposited into a General Fund in the Treasury.

Senator Baucus introduced an amendment which stated that the fund created would be used to reimburse Customs for any overtime needed to fulfill Customs' responsibility.

But OMB has apportioned a limited amount from the fund, directly counter to the will and intent of Congress, which means that the public, who is paying the user fees, are not receiving the service they are paying for.

The whole idea of a user fee is those who are using it pay for it. What OMB has done is translate the user fee into a general tax.

What we have through OMB interference is, those who are now paying are not receiving what they bargained for, and in fact are receiving less.

So we urge that Congress remove OMB from the process, and we urge that this Congress make it clear to OMB that the user's fee fund is to be used to offset the overtime, because Congress must be able to have its intent fulfilled and its mandates carried out.

Mr. Chairman, I have tried to identify the problems and the solutions that NTE recommends. I will be very pleased to answer any specific questions you might have.

[The statement of Mr. Tobias follows:]

STATEMENT OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY OF EMPLOYEES UNION

Mr. Chairman and Members of the Subcommittee:

I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 120,000 Federal workers, including all employees of the U.S. Customs Service worldwide. I am accompanied by Patrick Smith, NTEU Director of Legislation, and Paul Suplizio, legislative consultant.

I appreciate the opportunity to participate in this Subcommittee's oversight of Customs operations, and to discuss our recommendations for Customs modernization and the Administration's budget request for Fiscal Year 1988.

The U.S. Customs Service is an agency in crisis. Billions of dollars in illegal imports are entering each year, commercial fraud in steel, textile and electronics is growing, and extensive violations of product marking, trademark, and copyright laws are continuing. A thriving trade in counterfeit goods, estimated to be on the order of $15 billion a year, is stealing our intellectual property and endangering the health and safety of our citizens.

Enhancing Voluntary Compliance With Our Trade Laws

Our international trade is so extensive that Customs cannot expect to examine every shipment or every merchandise entry. To do so would impose an intolerable burden on commerce. Therefore, Customs must aim for a high degree of voluntary compliance with the customs laws. It can do so only by adequately staffing its commercial operations facilities in each port, and providing ready service to importers who require assistance in complying with our trade laws. Customs is not only an enforcement agency, it is a service agency -- and adequate service is the foundation on which a high degree of voluntary compliance must be built.

Today our trade laws are much more complex than a decade ago. There are far greater numbers of exclusion orders and trademark recordations; country of origin, visa, and export certificate requirements; antidumping and countervailing duty entries; voluntary restraint agreements and quotas; as well as temporary duty suspensions, tariff reclassifications, and duty increases enacted by Congress. As our imports have risen, so has the number of importers who require assistance from Customs in understanding the often bewildering array of trade laws and regulations.

It is Customs' duty to staff its commercial operations offices adequately and make the services of Import Specialists available to the trade community. However, just the opposite has happened. Customs has reduced the number of Import Specialists from 1,300 a decade ago to 900 today. It plans to consolidate commercial operations in fewer and fewer locations, reducing the presence of Import Specialists in a large number of ports. At a recent meeting under the auspices of the Ways and Means Committee, representatives of the trade community noted that it was virtually impossible to obtain a "line review" of an entry by an Import Specialist anymore, to assist the importer with classification and valuation issues. These representatives also noted that the calibre of Import Specialists has fallen as more experienced workers have quit the Service due to low morale and poor working conditions. The expertise of the Import Specialist is highly sought after by firms engaged in international trade. Halting the drain of this talent, and rebuilding Customs reserves of this critically scarce resource are paramount challenges facing Customs.

In enacting a commercial operations user fee last year, Congress declared its intention that Customs provide an adequate level of service to the trade community. Providing such service is not only right because the trade community is paying for it, but it would also enhance compliance with the customs laws. Because of OMB's repeated abuse of its budgetary powers of rescission, deferral, absorption, and apportionment -- powers that we strongly recommend it be stripped of -- the level of service will deteriorate if the Administration's budget proposals are adopted.

A high degree of voluntary compliance can't exist if persons who violate the law are not caught and punished. If the risk of getting caught is low, the attitude can spread that it's all right to cheat because "everyone else is doing it". A normally honest importer may feel compelled to cheat in order to keep up with the competition. Enforcement assures that all play by the same rules.

Our trade laws are not self-enforcing. They must be policed if the protections they guarantee are to be effective. This is not an issue of free trade versus protectionism. The issue is whether our trade laws will continue to be violated with impunity. Only last month, Customs announced that the U.S. subsidiary of Daewoo, the Korean steel firm, had paid a penalty of $988,000 for filing nine entry summaries over a two-year period that were false. This is the same Daewoo that was caught three years ago in the same type of fraud! Many of our trading partners are treating our trade laws with contempt and abuse. We need to send a strong signal to those allies, whose defense burden we are bearing, that this will not be tolerated.

Deterrence of commmercial fraud is hamstrung by inadequate enforcement capability within Customs; too few inspections, and too many entries being accepted on the honor system, without Import Specialist review. According to GAO, 98 percent of merchandise imports are entering without physical inspection of any kind. Even though the majority (approximately 70 percent) of entries are dutiable, on nearly 70 percent of all entries tariff classification and duty computation are left to the discretion of the importer. As a result of this lax enforcement, a large amount of revenue is being lost to the Federal government. Based on the results of a test conducted by Customs in Chicago in 1983, the Commercial Enforcement Selectivity Test, we have computed that Customs this year will lose approximately $700 million in direct enforcement revenue.

In addition, revenue is being lost from the low level of voluntary compliance. Customs currently collects nearly $15 billion in revenue each year. Each percentage decline in voluntary compliance costs the service about $150 million in lost revenue. Our judgement, based on the enormous volume of illegal imports, is that voluntary compliance with the customs laws is not better than 60 percent -- and probably much less. This implies a revenue loss to the Treasury of $6 billion annually.

If Customs is to improve enforcement and services to importers, it must automate its basic functions. Customs has acquired a large computer capability in recent years, and is staking its hopes on the Automated Commercial System. All of us -- Customs employees, Congress, and the nation -- have a large stake in the way Customs automates its procedures. NTEU has from the outset strongly supported automation leading to a more efficient and effective Customs Service.

Despite propaganda to the contrary, Customs efforts at automation have been highly disappointing, ranging from outright failure to throwing out the baby with the bathwater. An example of outright failure is the ACCEPT system for selecting high-risk shipments for intensive examination. GAO recently issued a report on this system (GGD 86-136) and found it to be virtually useless because of inadequate criteria for identifying high-risk shipments, and inadequate quidance for the conduct of inspections. NTEU has criticized ACCEPT since its inception as a case of "garbage in, garbage out" because of failure to collect and analyze data to identify what is high-risk and what is not, and because of its disruption of the Inspector-Import Specialist team which forms the backbone of Customs enforcement.

An example of throwing out the baby with the bathwater is the Automated Broker Interface (ABI) that Customs is ballyhooing as "paperless entry". In fact, ABI is much more mundane. By allowing brokers and others to transmit entry data directly to Customs computers, ABI eliminates the need for Customs to key-punch the data. Customs is not accepting ABI input in lieu of entry, rather, it still requires the hard-copy entry summary to accomplish this. At the same time, Customs is eliminating the requirement for all back-up trade documentation to be submitted for entries processed through ABI. What this means is that it will be impossible for Customs to ever review such entries to determine issues of classification, value, or admissibility. Since entries are automatically liquidated at the end of a year, and liquidation has been held by the courts to bar any further production of documents, Customs would be prevented from making a case even if it subsequently uncovered evidence of fraud.

Customs has done nothing to automate the entry review function performed by Import Specialists, despite its critical importance for enforcement and compliance. As Inspectors are not experts in the many different commodities they must deal with, they must frequently be guided by knowledgeable Import Specialists in making inspections. One of the main criticisms of the recent GAO study of cargo inspections was that, apart from narcotics, Inspectors did not know the purpose of their inspections. As a result, they often failed to count the quantity being entered or to verify weight, despite the fact that as much as $25 billion in unreported goods are entering undetected each year. This illustrates the critical failure in commercial enforcement resulting from the breakdown of communication between Import Specialists and Inspectors under the ACCEPT system. If Import Specialists were truly involved, Inspectors would be more certain of what to look for, especially in making examinations to enforce our trade laws.

We are advised that detailed examination instructions are now being programmed into ACCEPT, but we remain skeptical that such a system can ever substitute for open communication and interaction between Inspectors and Import Specialists. The entry review function is central and needs to be automated in a way that allows the Import Specialist to call up the entry on a video screen, and to communicate with Inspectors, with other ports, and with the Customs Information Exchange. However, Customs is only beginning to conceptualize this system.

The decisions Customs makes in its automation program will impact not only on Customs itself, but on the entire international commercial system of the United States, including ports, carriers, brokers, and importers. As these entities will one day interface with Customs' computers, important issues of standardization and compatibility arise. These issues are being raised concerning the Automated Manifest System that is being designed by Customs. Customs states that the dual purpose of this system is for inventory control of goods delivered by carriers, and advance determination of shipments to be released or inspected. Security would have to be assured if such a system were used for enforcement purposes, and it should be clearly recognized that advance receipt of manifest information does not reduce the need for clearance of incoming vessels, or for physical inspection of cargo to verify manifest listings.

Another system introduced by Customs that has caused consternation in the the trade community is the Port of Arrival Immediate Release and Enforcement Determination (PAIRED) system. Under PAIRED, entries may be filed in one port for shipments cleared in another port. The concept of clearance in other than the district where entry is made is viewed as a threat to the economic viability of inland ports, where goods are shipped in-bond and entered and cleared upon arrival. Despite objections, Customs has expanded the system nationwide, though presently on a voluntary basis. Because it comes at a time when the services of Import Specialists are being cut back in many ports, PAIRED seems to be mainly an excuse for further reduction of service. We believe the program should be halted until its impacts on the economies of port communities are assessed.

If the nation is not to squander billions of dollars in automating its international commercial system, it is important that managerial capabilities to design and implement these systems be as competent and sophisticated as we can mobilize. This is a matter too important to be left to Customs itself. Industry must be consulted and Congress must play an active part in overseeing this process from beginning to end, for what is at stake is the shape of the nation's entire trade infrastructure in the 21st century.

In recent years, Customs management has resembled a firefighting operation, as task forces have been rushed into action to handle the emergency of the moment. These tactics have garnered headlines but have lacked staying power, as the operation eventually terminates and resources are redeployed elsewhere. A famous example is the shutdown of Operation Steeltrap, a steel fraud operation in Pittsburgh, when two-thirds of the investigators were sent to South Florida to participate in a narcotics operation. When the commercial fraud program was finally launched, special fraud enforcement task forces proved so successful that Congress calld upon Customs to make them permanent.

Customs cannot go on forever with its "blitz" style of management. It has to request the resources it needs to carry out its enforcement and service functions on a continuing basis. Customs sorely needs a resource planning system to determine how to allocate additional resources where their impact on enforcement, revenue, and voluntary compliance will yield the greatest return. Customs does not attempt to measure the extent of compliance with the Customs laws, thus it has no idea what the level of compliance is. Except for one or two studies like the Chicago test, it has not gathered data on broker error rates or the impact on compliance and revenue of more Import Specialist visits to importers' premises. As GAO recently noted, Customs has retrieved virtually no useful data from the inspections it performs that would enable it to profile high risk shipments. Customs quality assurance system for entries tells us that error rates are less than ten percent, yet this check is little more than a math verification and doesn't involve visits to importers' premises or other steps to verify classification, value, quantity, or country of origin. It is hard to accept the reliability of such a system when Customs itself has found, through Project Marker, that 90 percent of the goods examined contained false or inaccurate marking.

Customs recognized this deficiency and charted a course of action to remedy it in a draft "Five-Year Plan" that it produced several years ago. Customs also launched a "compliance measurement program" in 1981, but quickly terminated it when importers selected for a full inspection objected to the cost and inconvenience. Since inspections must be made and someone must bear the cost, it may be advisable to cover certain costs out of customs user fees in order to reduce importers' objections to necessary examinations.

Customs should be required to prepare a five-year plan specifying its voluntary compliance, service, and performance objectives. It should provide estimates of returns from inspections, entry reviews, visits to importers' premises, and services that enhance voluntary compliance and revenue collection. It should also specify resource requirements to implement the plan.

U.S. Customs Service Budget for FY 1988

This will be a year of decision for Customs. The see-saw struggle between Congress and the Administration over cutbacks in the Customs Service has been prolonged for six years and has reached a stalemate. OMB has repeatedly refused to hire most of the additional staff that Congress has mandated, utilizing its powers of rescission, deferral and absorption to frustrate the congressional intent. For example, in the FY 1986 Continuing Resolution Congress provided for 14,041 average positions, but only 13,059 positions were actually realized that year as a result of OMB's keeping the lid on hiring.

The present impasse was brought about by the provision of the FY 1987 Continuing Resolution requiring Customs to be staffed at no fewer than 14,891 positions in the current fiscal year. Despite the fact that this requirement is the law of the land, OMB is using its deferral, absorption, and apportionment powers to delay hiring until the end of March, when only six months will remain in the fiscal year. At that point, Customs will be 1,000 average positions short of the legislated mandate, with too little time left to hire the required number of people.

Our Constitution places the power of the purse in the hands of Congress, and in the hands of Congress alone. Congress, through the power to appropriate, has the right to specify the objects of public expenditure, including the numbers and types of staff for an agency. The President is charged with taking care that the laws are duly executed. OMB's frustration of congressional intent, spanning a six-year period, is not only an unwarranted infringement on the domain of Congress but a challenge to congressional authority.

Congress should send a clear signal to OMB that it will not tolerate further abuse of the powers of rescission, deferral, and apportionment by amending the Budget Act to strip OMB of such powers in the case of all funds appropriated or made available to the Treasury Department. In addition, the Treasury Appropriations Subcommittees should strike all funding for OMB's Office of the Associate Director for Treasury and Justice in the FY 1988 Treasury Appropriations bill.

We recommend that the FY 1987 Supplemental Appropriation contain provisions that will (1) disapprove the $38.9 million rescission proposed for Customs by OMB; and (2) add $21.5 million for Customs Salaries and Expenses to offset the absorption of that amount required by OMB for part of the cost of the Federal pay raise and the Federal Employee Retirement System.

The Administration's FY 1988 budget proposal cuts Customs 2,000 positions below the level of the FY 1987 Continuing Resolution (see Table 1). We believe that Congress should restore these positions by adding 1,998 average positions and $73.3 million to the Administration's budget request, and then appropriate funds out of the Customs User Fee Account for a Commercial Operations Initiative consisting of 2,000 additional positions costing $150 million.

Commercial Operations Initiative

These 2,000 new positions would be allocated to the Commercial Operations activity in the following manner: 1,000 for Inspection and Control, 800 for Tariff and Trade, and 200 for Investigations. Approximately 1,000 Inspectors and Inspector Aides, 400 Import Specialists, 400 Entry Clerks, and 200 Special Agents would be included.

The Commercial Operations Initiative would be the first step in a three-year program that would increase commercial operations resources by 6,000 average positions in order to raise the level of Customs services and restore a reasonable level of compliance with our trade laws. Approximately $1.4 billion is expected to accrue to the Customs User Fee Account from user fees collected in FY 1987 and FY 1988. The total cost of the 6,000-position Commercial Operations Initiative (including training, equipment, and overhead costs) is estimated to be $450 million. This amount includes $30 million for ADP and communications equipment. This $450 million cost of the Commercial Operations Initiative plus the basic Commercial Operations appropriation of $500 million for FY 1988 are well within the funds projected to be available in the Customs User Fee Account by the end of FY 1988. It should be recognized that, if Congress fails to take action to use the funds available in the user fee account to enhance the level of commercial operations services, the user fee will be automatically reduced in FY 1988 and future years.

An unprecedented opportunity exists to protect the American economy from illegal imports and at the same time to reduce the Federal deficit. An expenditure of $150 million for 2,000 additional commercial operations positions in FY 1988 would yield an estimated $1.3 billion in additional revenues during the first year of the program, and $1.4 billion in each succeeding year.

The dimensions of the non-compliance problem in the flow of imported merchandise is shown in Table 2. Nearly $40 billion in illegal imports enters the country each year, entailing an estimated revenue loss of $3-$6 billion annually to the Treasury. This does not count the social and economic costs of market disruptions created by these imports. About a half million jobs, $19 billion in lost sales to U.S. firms, $8-$12 billion in lost GNP, and $1.5-$2.2 billion in lost Federal taxes are attributable to illegal imports (Tables 3 and 4). The decline in voluntary compliance with the Customs laws, due to inadequate enforcement efforts to deter non-compliance, costs the Treasury $150 million in lost revenue for each 1 percent decline in voluntary compliance.

The largest part of the problem, $25 billion or 65 percent of the total, consists of unreported goods that go undetected due to insufficient cargo processing staff. These unreported goods include both tariff and quota merchandise of all kinds. The next largest component, $12 billion or 31 percent, consists of counterfeit products. Another $1.6 billion consists of goods such as steel, electronics, and textiles, imported in violation of specific trade programs.

To counter this non-compliance, Customs now employs 7,900 average positions in cargo processing and trade law enforcement, a reduction from over 9,000 positions in 1980 (see Table 5). The non-compliance trend has been rising in recent years in the face of declining Customs resources and rising workload. Data submitted by Customs to the House Ways and Means Committee shows the volume of illegal imports continuing to rise between now and 1990. Revenue loss associated with this non-compliance will also rise unless significant action is taken.

Customs is presently bypassing about 65 percent of merchandise entries, or about 5 million entries annually. Such entries do not receive adequate compliance attention by Inspectors and Import Specialists, the principal cargo processing resources. Import Specialists and Inspectors should work as a team, with Import Specialists signalling to Inspectors what to look for during an exam, and Inspectors bringing to the Import Specialist's attention what has been observed in a shipment. Entries by-passed by an Import Specialist will not receive adequate attention by Inspectors, and vice-versa.

Since 56 percent of all entries consists of trade program entries, Customs is not applying sufficient resources to verify compliance with trade program requirements. In addition, 70 percent of entries are dutiable. To process all dutiable entries, only 30 percent should be set for bypass (see Tables 6 and 7).

Dutiable and trade program entries show the dimensions of the universe on which it would be profitable to concentrate intensified commercial operations efforts. It is conservatively estimated that approximately 3 million dutiable entries will be bypassed in FY 1988 if enforcement is not strengthened. Substantial revenue in these entries will be lost if not processed by the Inspector/Import Specialist team.

Between bypass rates of 30 and 65 percent the marginal revenue from processing additional entries would be significant. Customs yields significant revenue return to the Federal government, as shown in Tables 8 and 9. Despite changes in Customs workload and commercial operations resources, the average revenue collected per formal entry has remained constant at around $2,000 since 1979. Table 10 shows that processing 1.1 million additional entries at a marginal revenue of $1,200 per entry would yield $1.3 billion in additional revenue. This would lower the overall bypass rate from 65 to 50 percent.

Table 10 also shows that it will take 1,800 average positions to process 1.1 million additional entries in FY 1988. This is computed from the fact that approximately 633 entries can be handled on average by a single cargo-processing position. Table 5 shows how the figure of 633 entries is dervied from historic data. Cargo processing positions include both inspectional and tariff and trade personnel.

Adding 200 Special Agents to follow up on the commercial fraud leads developed by Inspectors and Import Specialists, yields a total requirement for 2,000 average position to launch the Commercial Operations Initiative in FY 1988. NTEU proposes that 2,000 positions be added each year during the three-year period, FY 1988-1990, to bring the overall bypass rate down to 30 percent, to inspect more shipments, and to provide more resources for activities which enhance voluntary compliance and deter fraud, such as more assistance to importers and permanent staffing for District Fraud Enforcment Task Forces.

As shown in Table 10, an additional 2,000 average positions in FY 1988 will yield $1.3 billion in the first year of the program, part of which may be collected in FY 1989 depending upon the time required to staff up. These resources will generate $1.4 billion in the second year of the program, when an additional 2,000 positions will be added, bringing in $1.1 billion, for a total of $2.5 billion in the second year. In the third year, entry bypass will be at 30 percent or lower, and $2.8 billion will be collected. Over the three-year period, total collections would be $6.6 billion and total costs would be $450 million, for an incremental return of 14.6 to 1.

NTEU's method of estimating marginal revenue per entry is shown in the Addendum to our testimony. Because of the substantial number of bypassed entries that are dutiable, and the fact that unreported products and counterfeits may be detected when additional entries are checked, marginal revenue in the current range of commercial operations is assumed to be significant relative to the average. Between bypass rates of 65% and 50%, the marginal revenue is estimated to be $1,200 per entry, betwen 50% and 35% bypass levels $1,000, and below 35% $800 per entry.

In summary, a relatively modest expenditure on Customs Commercial Operations resources would yield significant additional revenues to the Treasury. These revenues would flow not only from direct enforcement activity, but also from increased voluntary compliance and deterrence of commercial fraud. A Customs Commercial Operations Initiative would be a worthwhile national investment, beneficial to the economy and capable of making a significant reduction in both the Federal and trade deficits.

Inspectional Overtime

Inspectional overtime has become a critical resource for meeting Customs' growing demands for clearance of passengers and cargo. For nearly a decade, a virtually static inspectional force has had to process a growing number of air travelers and cargo shipments. With its workforce limited by OMB personnel ceilings, Customs inspectional overtime has expanded to fill the gap between workload and resources.

The amount of inspectional overtime is driven by the demand of carriers for inspectional services outside the normal duty hours of the port. Customs is reimbursed for the cost of such services from the Customs User Fee Account. Since overtime costs are now borne by all carriers rather than the individual carrier requesting service, we anticipate that demand for overtime services will rise as individual carriers request services that they are no longer billed directly for.

To ensure that sufficient overtime funds are available to meet anticipated demand, we believe Congress should mandate the merger into a single user fee account of the Passenger and Vessel User Fees enacted in 1985 and the Commercial Operations User Fees enacted in 1986. This was the original Congressional intent, but OMB has chosen to treat the fees as two separate accounts. In addition, outlays from user fees should not be subject to automatic budget cuts under Gramm-Rudman-Hollings, as Congress enacted these fees to provide an adequate level of service to the trade community.

An Inspector with overtime earnings of $15,000-$20,000 a year works an average of 62 hours a week, 52 weeks a year. A 1981 Customs study of overtime showed that, in addition to a normal 40-hour week, the average Inspector is required to work three of every four Sundays, one Saturday per month, and seven week-day overtime assignments per month. Because of the growing workload and limited staff, it is evident that an extensive commitment to inspectional overtime is entailed if Customs is to accomplish its mission.

For Inspectors to make themselves available such long hours, particularly on Sundays and holidays when other citizens are vacationing, adequate monetary incentive must be provided. The most recent data collected by Customs shows that Inspectors are earning, on the average 2.1 times the regular rate of pay on Sundays and 2.4 times the regular rate on the other days of the week. The Customs' study attributes the 2.4 rate of pay to the call-back of Inspectors who have left the worksite. Call-backs frequently occur at night and at irregular hours, and such irregular work takes a physical toll on the workforce, as is documented in several studies. The 1981 study also showed that the average Inspector works 7 hours on each Sunday assignment, and an average of 8 hours if holidays are included in this figure.

We are convinced that the frequent call-backs, the late-night hours spent away from home, and the physically demanding nature of inspectional duties justifies the present rate of overtime pay. Moreover, these rates of pay conform with the prevailing overtime rates in the private sector, which normally establishes double time premiums for call-back and night work, and where typical practice is triple time for Sunday overtime and double time and one-half for holiday work. These facts were established in the OPM Premium Pay Study conducted in 1983.

We urge the Subcommittee to remove the $25,000 cap on Customs Inspector overtime earnings. The overtime cap has long outlived its usefulness. Proponents of the cap claim to be acting in the employee's interest by limiting the amount of overtime Inspectors could be compelled to work. However, the overtime cap had exactly the opposite effect and has completely eliminated the voluntary aspect of overtime. This is because Inspectors are required to rotate overtime assignments so that the earnings of all can be equalized.

Customs itself has urged Congress to remove the overtime cap. Treasury Department officials have testified that, in addition to costing $1 million a year to administer, the cap is preventing Customs from properly allocating its limited resources among ports experiencing different rates of growth.

Delegation of authority to waive the cap has been granted Customs by Congress. We submit that the time has come to remove the cap completely, in favor of Customs internal controls. We strongly urge the Subcommittee to adopt this course of action.

Customs Modernization Amendments of 1987

To maximize the effectiveness of the additional resources to be made available to Customs under the Commercial Operations Initiative, we believe that Congress should enact clear standards which recognize the principles we specified earlier, namely, fostering voluntary compliance through additional services to the trade community, basing enforcement on the Inspector/Import Specialist team, stripping OMB of its obstructive power, strengthening managerial capability and consultations with industry in automation projects, stemming the drain of experienced and talented people from the Service, and establishing a resource planning system so that Customs can allocate additional resources where their impact on enforcment, revenue, and voluntary compliance will yield the greatest return.

We propose that Congress enact this session the "Customs Modernization Amendments of 1987" that would:

- direct that the corps of Inspectors and aides be staffed at no fewer than 6,000 average positions in FY 1988, 7,000 in FY 1989, and 8,000 in FY 1990 (a 1,000-position increase in each fiscal year);

- direct that the corps of Import Specialists and entry clerks be staffed at no fewer than 4,000 average positions in FY 1988, 5,000 in FY 1989, and 6,000 in FY 1990 (a 1,000-position increase in each fiscal year);

- raise the senior grade for Inspectors and Import Specialists one GS level, to facilitate recruitment and retention of critically short personnel;

- establish on a permanent basis Special Fraud Enforcement Teams in all 45 Customs Districts and areas;

- mandate, for each current duty assessment location, a specified number of Import Specialists for that location, with provision for adjustment based upon the number of entries, types of commodities, and size of the importer and broker community in the location, provided full justification is submitted to the House Ways and Means and Senate Finance Committees;

- establish, as a standard, that a minimum of 70 percent of all entries are to be reviewed by Import Specialists, and require Customs to take steps to achieve this standard within three years;

- establish, as a standard, that a minimum of 25 percent of Import Specialist fraud referrals shall be followed up by the office of Investigations, and require Customs to report progress in meeting this standard to the Committee on Finance and the Committee on Ways and Means;

- require GAO to study the optimum way for Customs to organize to assure a high degree of compliance with trademark and copyright recordations, and ITC exclusion orders aimed at protecting U.S. intellectual property rights;

- amend the Budget Act to abolish OMB's powers of rescission, deferral, absorption, and apportionment with respect to funds appropriated or made available to functions or agencies of the U.S. Treasury Department;

- provide that, absent fraud or conspiracy to import dangerous drugs, the additional loading, unloading, demurrage, and transportation costs incurred by an importer as a result of intensive Customs examination will be reimbursed from commercial operations user fees;

- provide $1 million for a contract study to evaluate Customs ADP systems for entry processing, quota control, in-bond shipment, manifest clearance, and enforcement, incorporating the following standards: maximum reliance upon the Inspector-Import Specialist team for enforcement; automated review of entries by Import Specialists; capability of Import Specialists to communicate with Import Specialists at other ports and with the Customs Information Exchange; standardization and compatibility with computers of ports, carriers, importers and brokers;

- terminate the PAIRED system until Customs submits an evaluation of the impacts of the system on the economies of port communities;

- mandate the merger into a single Customs User Fee Account the Passenger and Vessel User Fees and the Commercial Operations User Fees;

- require the design and implementation of a resource planning system, preparation of a Customs 5-year plan, and a GAO study of the progress and effectiveness of Customs in carrying out this requirment;

- require Customs to submit a report showing alternative ways it could use 1,000 additional FTE to enhance voluntary compliance through improved services and assistance to importers and others in the trade community;

- require a GAO study of the effectiveness of the present audit/inspection approach to bonded warehouse and Foreign Trade Zone compliance, compared to having a physical Customs presence, with recommendations as to the optimum approach for assuring a high degree of compliance with the trade laws by users of these entities;

- mandate that budget authority and outlays paid for from Customs user fees shall not be subject to automatic budget cuts; and

- eliminate the cap on inspectional overtime.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions.

TABLE 1

U.S. CUSTOMS SERVICE FY 88 BUDGET REQUEST AND NTEU RECOMMENDATION

(Amounts in Thousands of Dollars)

	FY 88 BUDGET REQUEST		ADD-ON REQUIRED FOR RESTORATION TO FY87 CR LEVEL		RECOMMENDED BASE-LINE FOR FY 88 APPROPRIATIONS		NTEU RECOMMENDED ADDITION		NTEU RECOMMENDED APPROPRIATION	
	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions
Inspection and Control	62,439	1,505	+34,200	+1,170	96,639	2,675			96,639	2,675
Tariff and Trade	--	--	--	--	--	--			--	--
Tactical Interdiction	133,048	1,956	+10,946	+26	143,994	1,982			143,994	1,982
Investigations	108,405	1,577	+8,753	+16	117,158	1,593			117,158	1,593
Commercial Operations	499,198	8,001	+60,202	+999	559,400	9,000	+150,000	+2,000	709,400	11,000
SUB-TOTAL	803,090	13,039	+114,101[a]	+2,211	917,191[a]	15,250	+150,000[c]	+2,000[c]	1,067,191	17,250
Operation & Maintenance, Air Interdiction Program	86,210[b]				86,210				86,210	
TOTAL	889,300	13,039	+114,101	+2,211	1,003,401	15,250	+150,000	+2,000	1,153,401	17,250

a. Includes restoration of FY 87 rescission of $38,945,000 and 1,485 FTE, FY 1988 cut of $12,825,000 and 513 FTE, and FY 88 add-ons to maintain FY 1987 C.R. levels (including pay raise and FERS) as specified in Customs Service Budget Supplement, "Salaries and Expenses FY 1988 Current Service Levels."

b. Reduction from FY 1987 level of $170,950 due to several one-time equipment purchases in FY 1987.

c. Includes 1,000 positions for Inspection and Control, 800 positions for Tariff and Trade (400 Import Specialists and 400 Entry Clerks), 200 Commercial Fraud Investigators, and $10 million for ADP improvements.

TABLE 2

Commercial Fraud Is Huge

(In Billions of Dollars)

	1985	1986	1987	1988	1989	1990
Goods Imported but Unreported (est.)	25	25	25	25	25	25
Counterfeit Goods[1]	10.5	11	12	12.5	12	12
Goods Imported in Violation of Trade Agreements[1]						
Steel	.550	.525	.500	.575	.600	.625
Textiles	.450	.473	.495	.518	.540	.563
Other[2]	.425	.446	.468	.488	.510	.531
Sub-Total	1.375	1.444	1.513	1.581	1.650	1.719
Grand Total	36.875	37.444	38.513	39.081	38.650	38.719
Estimated Revenue Loss[3]	3.0	3.0	3.0	3.0	3.0	3.0
Est. Sales Loss to U.S. Firms[4]	19	19	19	19	19	19
Est. GNP Loss[5]	8-12	8-12	8-12	8-12	8-12	8-12

TABLE 2 Cont'd.

[1] U.S. Customs Data

[2] Includes Electronics

[3] The average rate of duty on dutiable imports is 8%. Applying this rate to $38.6 billion yields a conservative estimate of the revenue loss, as fines, penalties and forfeitures, in addition to duties, would be involved in actual cases.

[4] ITC estimate for conterfeit goods alone in $6 billion. To this is added one-half of unreported goods and goods imported in violation of trade agreements.

[5] Manufactured imports were $300 billion in 1984, and illegal imports of $40 billion would raise this amount by 13.3%. A Department of Commerce analysis found a loss of from $60 to $90 billion in GNP as a result of the trade deficit (exports minus imports) in 1984. Assuming these losses would increase in the same proportion as the increase due to illegal imports, there would be an additional loss of $8-$12 billion in GNP.

TABLE 3

JOBS LOST FROM ILLEGAL IMPORTS IN SELECTED MANUFACTURING SECTORS, 1984

	LEGAL IMPORTS (Billions)	TOTAL EMPLOYMENT (000)	EST. ILLEGAL IMPORTS (BILLIONS)	NET JOBS LOST FROM LEGAL TRADE[1]	ESTIMATED JOBS LOST FROM ILLEGAL IMPORTS[2]
Textiles & Apparel	23.640	1915	5.04	674,000	144,000
Rubber & Misc. Plastics	6.653	763	1.40	89,000	18,700
Leather	8.819	176	1.88	238,000	50,700
Primary Iron & Steel	12.022	512	2.56	148,000	31,500
Primary Nonferrous Metals	11.341	299	2.40	95,000	20,100
Fabricated Metal Products	7.130	1377	1.52	87,000	18,500
Electrical & Electronic Equip.	48.103	2078	10.28	356,000	76,000
Motor Vehicles & Equipment	51.496	882	11.0	196,000	42,000
Instruments	8.596	524	1.84	34,000	7,300
Misc. Manufactures	9.700	395	2.08	135,000	29,000
TOTAL	187.5	8921	39	2,052,000	437,800

[1] Derived from data on 1984 imports and net employment changes from trade contained in Kan Young, Ann Lawson, and Jennifer Duncan, Trade Ripples Across U.S. Industries, U.S. Department of Commerce Working Paper, January 1986. Net jobs lost from legal trade are jobs gained from exports minus jobs lost from legal imports. Illegal imports of $39 billion are assumed to be an addition to legal imports, and are distributed in same proportion as industry's share of legal imports.

[2] Based on proportion of illegal imports to legal imports, e.g., for textiles and apparel, (5.04 ÷ 23.64) x 674,000 = 144,000.

TABLE 4

Illegal Imports Are Costing the Nation Each Year—

- $3-$5 Billion in Lost Customs Revenues
- $19 Billion in Lost Sales
- $8-$12 Billion in Lost GNP
- 500,000 Lost Jobs
- $1.5-$2.2 Billion in Lost Federal Taxes

TABLE 5

MERCHANDISE ENTRIES AND CARGO PROCESSING POSITIONS

FY 1980-1988

Fiscal Year	Formal Entries	Cargo Processing Positions (FTE)		
		Cargo Inspection	Tariff & Trade	Total
1980	4,374	5,108	4,082	9,190
1981	4,588	5,102	3,837	8,939
1982	4,703	4,693	3,748	8,441
1983	5,314	4,830	3,595	8,425
1984	6,421	4,842	3,541	8,383
1985	6,823	4,853	3,197	8,050
1986	7,251	4,824	3,031	7,855
1987	7,521	4,861	3,046	7,907
1988	7,592	4,861	3,046	7,907

NOTES:

1. Formal entries increased 3,218,000 or 74%; total cargo processing staff decreased 1,283 average positions, or 14%.

2. Workload, measured as formal entries per cargo processing position, rose from 476 in 1980 to 960 in 1988, a 102% increase.

3. Productivity, estimated as the number of entries each cargo processing position is capable of handling, was 513 entries per position in 1981. Assuming a 3 percent per year

TABLE 6

FORMAL ENTRIES BY TYPE AND NUMBER REQUIRING IMPORT SPECIALIST REVIEW, FY 1983 AND FY 1985

(In Thousands)

	1983	Percent[1]	1985	Percent[1]
Total Formal Entries	5314	100	6823	100
Trade Program Entries:				
Quota and Monitored	519.0		891	13.06
GSP	372.4		471.8	6.91
Antidumping	24.5		31.2	.46
Countervailing Duty	60.4		83.4	1.22
Steel Program	108.8		164	2.40
Sub-Total	1085	20	1641.4	24.1
Other Agency Entries[2]	1100	20	2056	30.1
Licensing Requirements[3]	100(est)	2	148	2.17
Dutiable Entries	3565	67	4743	69.5
Estimated Entries Requiring Import Specialist Review[4]	3354.5	63	5268	77.2

[1] Components do not add to 100% due to overlap between dutiable entries and other entries.

[2] Entries where Customs enforces requirements of other agencies, e.g., Agriculture, FDA, EPA, etc.

[3] Licenses required for importation by DOA, DOE, and other agencies (these totals are not included in other agency requirements, described in Note 2).

[4] Consists of all trade program, other agency and licensing entries, and 30 percent of dutiable entries.

SOURCE: U.S. Customs Service

TABLE 7

TRADE PROGRAM AND DUTIABLE ENTRIES, COMPARED TO BY-PASS

FY 1983-1988

FISCAL YEAR	TOTAL FORMAL ENTRIES (000)	DUTIABLE ENTRIES (000)	PERCENT OF TOTAL	TRADE PROGRAM ENTRIES (000)[1]	PERCENT OF TOTAL[2]	BY-PASS RATE[3]	ENTRIES REVIEWED (NOT BY-PASSED) (000)
1983	5,314	3,565	67.1	2,285	43	50	2,657
1984	6,421	4,402	68.6	--	--	--	--
1985	6,823	4,743	69.5	3,845	56	60	2,697
1986	7,251	5,076	70.0	4,061	56 (est)	65	2,538
1987	7,521	5,265	70 (est.)	4,212	56 (est.)	65	2.632
1988	7,592	5,314	70 (est.)	4,252	56 (est.)	65	2,657

1. Trade program entries include quota and monitored, GSP, antidumping, countervailing duty, steel program, other agency entries, and licensing requirements.

2. Actual FY 1983 and FY 1985 data is extended to FY 86-88. Percentage totals add up to more than 100 percent because of overlap between dutiable and trade program entries.

3. This is the percentage of entries not designated for Import Specialist review. By-pass procedures were established by Customs because entry growth exceeded staff capability.

TABLE 8

Customs Yields Revenue To The Federal Government

	Average Revenue Per Dollar Appropriated	Incremental Revenue Per Dollar Estimated By CBO
1979	$19.05	
1980	$17.98	
1981	$18.48	
1982	$18.94	
1983	$17.01	
1984	$21.06	
1985	$20.16	$15.70

TABLE 9

AVERAGE U.S. CUSTOMS REVENUE COLLECTION PER FORMAL MERCHANDISE ENTRY

FY 1979-1988

FISCAL YEAR	TOTAL REVENUE COLLECTION (MILLIONS)	TOTAL MERCHANDISE ENTRIES (000)	AVERAGE REVENUE COLLECTION PER ENTRY ($)
1979	8,460	4,384	1,930
1980	8,230	4,374	1,882
1981	9,197	4,588	2,005
1982	9,981	4,703	2,122
1983	9,785	5,314	1,841
1984	12,541	6,421	1,953
1985	13,237	6,823	1,940
1986	14,731	7,251	2,032
1987(est.)	14,982	7,521	1,992
1988(est.)	15,271	7,592	2,011

TABLE 10

ADDITIONAL RESOURCE REQUIREMENTS AND REVENUE FOR COMMERCIAL OPERATIONS INITIATIVE, FY 1988-1990

FORMAL ENTRIES OF MERCHANDISE (000)	ENTRY BY-PASS RATE	ENTRIES TO BE REVIEWED (000)	NUMBER OF ADDITIONAL ENTRIES REVIEWED (000)	MARGINAL REVENUE COLLECTION PER ENTRY[2]	ADDITIONAL REVENUE YIELD FROM REVIEW OF ADDITIONAL ENTRIES ($MILLIONS) [3]	NUMBER OF ENTRIES PER AVERAGE COMMERCIAL CARGO PROCESSING POSITION [4]	ADDITIONAL AVERAGE POSITIONS REQUIRED TO PROCESS ADDITIONAL ENTRIES
ESTIMATE FOR FY 1988:							
7,592	65%	2,657					
7,592	60%	3,037	380				
7,592	50%	3,796	760				
FY 1988 SUMMARY			1,140	1,200	$1,368	633	1,800
ESTIMATE FOR FY 1989:							
7,700	45%	4,235	410[b]				
7,700	35%	5,005	770				
FY 1989 SUMMARY[a]			1,180	$1,000	$1,180	650	1,800
ESTIMATE FOR FY 1990:							
7,800	30%	5,460	410	$800	$328	670	600[c]

TABLE 10. (CON'T.)

1. Bypass is the rate established for entries not to be reviewed by an Import Specialist. Commercial Operations service levels can be expressed in terms of a decreasing bypass rate.

2. See Table 9 and addendum for discussion of how marginal revenue estimates were arrived at.

3. It is assumed that revenue collections will lag hiring of additional resources somewhat, depending upon the time required to staff up.

4. See Table 5 for derivation. Commercial cargo processing positions include Inspectors, Import Specialists, and support personnel.

5. Numbers shown do not include 200 Special Agents added each year in FY 1988-1990.

a. In addition, 1,170,000 entries will be processed by 1,800 positions at 650 entries per position in FY 1989, yielding revenue of $1.4 billion. This is the production of the 1,800 new positions brought on board in FY 1988, and is in addition to the production of the 1,800 new positions on board in FY 1989.

b. Obtained by subtracting from 4,235 the number of entries processed by existing staff (2,657) and the number of entries processed by new staff brought on board in FY 1988 (1,170).

c. Of 2,000 Commercial Operations positions requested for FY 1990, 600 will be used for cargo processing, 200 are commercial fraud investigators (Special Agents) and the remainder are Inspectors and Import Specialists assigned to provide more assistance to importers, to District fraud enforcement task forces, bonded warehouse and Foreign Trade Zone programs, and other activities which enhance voluntary compliance and deter fraud.

TABLE 11

U.S. CUSTOMS SERVICE
Average Positions
by Category
FY 1972 - 1988

Fiscal Year	Inspectors	Import Specialists	Patrol Officers	Special Agents	Total Customs
1972	3,184	1,312	485	853	11,116
1973	3,472	1,304	736	956	11,772
1974	3,693	1,208	971	532	11,878
1975	3,803	1,262	1,152	582	13,076
1976	3,873	1,256	1,191	614	13,380
1977	3,943	1,204	1,365	603	13,228
1978	4,077	1,207	1,251	600	13,854
1979	4,174	1,236	1,211	577	14,061
1980	4,165	1,219	1,231	604	13,820
1981	4,379	1,165	1,332	597	13,316
1982	3,987	1,081			12,924
1983	4,122	1,027	1,134	701	12,898
1984	4,289	1,042	1,246	932	13,319
1985	4,262	974	1,236	925	13,042
1986	4,305	927	1,072	982	13,059
1987 (ADMIN)	4,329	937	1,263	1,120	13,552
1987 (C.R.)					15,037
1988 (ADMIN)	4,158	902	1,232	1,078	13,039

Source: U.S. Customs Service Budgets

ADDENDUM

Estimating Incremental Revenue Return from Customs Commercial Operations Activities

General

Customs enforcement centers around two activities: inspection of shipments and review of entry documentation. Investigations by Special Agents assigned to commercial fraud cases, and post-audit of entry documents, back up these principal activities.

Data provided by Customs and GAO to the Congress show that --

a. with regard to inspection, 98 percent of merchandise is now entering without inspection; only 2 percent of containerized shipments (which comprise 70 percent of seaborne non-bulk shipments) are partially inspected by opening the tailgate and performing a visual check; and only .5 percent (20,000 out of 4 million) of containerized shipments are fully inspected by unloading the container. These low inspection rates have contributed to the internal Customs estimate of $25 billion in unreported products entering the country, in addition to $12 billion in counterfeit products.

b. with regard to review of entry documents, Customs is now allowing about 65 percent of entries to bypass review by Import Specialists; prior to the recent rapid escalation of entries starting in FY 83, 100 percent review upon entry was the policy. Import Specialists, working with Inspectors who would physically examine the shipments, made admissibility determinations prior to the products' entering the stream of commerce. This system served to deter commercial fraud and maintain a high voluntary compliance rate. Bypass and inspection of a miniscule proportion of shipments have led to a significant decline in voluntary compliance and a large inflow of illegal imports which is well documented in congressional hearings.

Decline in Voluntary Compliance

The voluntary compliance rate is the percentage of revenue owed that is collected. Customs collected $14.7 billion in FY 86 and says the voluntary compliance rate is around 90 percent (it infers this from a check of entry errors under its quality control program; it does not regularly measure compliance).

If $14.7 billion is collected at 90 percent compliance, $16.3 billion is the total amount of duty owed. Customs expects to collect $15 billion in FY 87 and $15.3 billion in FY 88, hence duty owed for these years would be $16.7 and $17 billion respectively.

Given the evidence presented to Congress (warehouses full of phony computers, billions in illegal steel and textiles, etc) and the minimal enforcement already described, it is not realistic to suppose that compliance is 90 percent today, or that it will remain at the level of previous years.

NTEU believes that Customs compliance is far less than 90 percent and that it has been falling significantly in recent years and will continue to fall until additional compliance resources are provided.

If total revenues owed are $16-$17 billion, then the revenue loss (or gain) from a 1% change in voluntary compliance is $160-$170 million. We use $150 million as a conservative estimate.

Increasing Revenue from Additional Customs Cargo Processing Staff

In a letter dated March 15, 1982 the Comptroller of Customs stated his view that the incremental yield from additional resources would be 3:1 (3 dollars return for each dollar spent). This letter was written before the recent large-scale inflow of imports and the relative decline in the number of inspections and entries being reviewed. It can be anticipated that incremental yield would be higher today. The 3:1 ratio can therefore be considered a lower bound. The average yield, 21:1, is an upper bound.

NTEU has examined cargo processing staff as a unit. One unit of cargo processing staff consists of 3 Inspectors, 1 Import Specialist, and .13 Special Agents assigned to fraud. The cost of this unit, at $35,000 per Inspector and Import Specialist staff-year and $59,000 per Special Agent staff-year is $147,670. Assuming 3:1 incremental return, the revenue yield would be $443,000. Since one cargo processing unit will process 633 entries on average in FY 1988, the incremental revenue per entry corresponding to a 3:1 yield would be $443,000 divided by 633 or $700.

Incremental revenue thus falls betwen $700 and $2,000 per entry, with the average revenue per entry ($2,000) constituting the upper bound. Midway between $700 and $2,000 woudl be $1,350. In its study, NTEU used $1,200 as the incremental revenue per entry for bypass rates between 65 percent and 50 percent, $1,000 per entry for bypass rates between 50 percent and 35 percent, and $800 per entry for bypass levels below 35 percent.

In the Commercial Operations Initiative, 1,140,000 additional entries would be processed by 2,000 additional positions in FY 1988. Using $2,000 per entry (the 1979-86 historical average), the total amount of revenue in these entries would be $2.28 billion. The total amount recovered from processing these entries, at $1,200 per entry marginal return, would be $1.37 billion.

Chairman **Gibbons**. Well, as I told you, I get tired of playing with OMB this game. It looks like to me they have grabbed a billion dollars out of this budget and put it over in defense, is what it amounts to, and then wait for the Congress to make it back up, and——

Mr. **Tobias**. And then blame you for being a budget buster.

Chairman **Gibbons**. And then blame us for being big budget busters. That is what it looks like.

Mr. **Tobias**. This is particularly egregious when we are talking about a revenue-producing agency.

Chairman **Gibbons**. Yes. But they know that we will act responsibly and put the money back in, so they can act irresponsibly in taking it out, is what happens.

Well, I am sorry that we find ourselves in that position, and you have had good testimony, and we will try to work the situation out again.

Mr. **Tobias**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Thank you, sir.

We have a panel now, the Joint Industry Group, consisting of Harry Lamar, our good friend, and former staff director here. From the American Association of Exporters and Importers, Mr. John Pellegrini, and the National Customs Brokers and Forwarders Association, Mr. Arthur Fritz, the president. All right. Harry, you lead off.

STATEMENT OF KENNETH A. KUMM, CHAIRMAN, JOINT INDUSTRY GROUP, AS PRESENTED BY HAROLD T. LAMAR, SECRETARIAT, ACCOMPANIED BY DAVID J. ELLIOTT, ASSOCIATE DIRECTOR FOR CUSTOMS ADMINISTRATION OF PROCTER & GAMBLE; AND LEONARD LEHMAN, COUNSEL, JOINT INDUSTRY GROUP

Mr. **Lamar**. Thank you, Mr. Chairman.

Chairman **Gibbons**. We are glad to have you here, and we hope we have not embarrassed you too much over the years. Go right ahead.

Mr. **Lamar**. It is a very different world from what it was when I was here, Mr. Chairman.

Chairman **Gibbons**. Yes, sir. It keeps changing on us, Harry.

Mr. **Lamar**. Mr. Chairman, I do serve as secretariat to the Joint Industry Group, and I appear here today in lieu of Mr. Kenneth Kumm, who was unable to be in Washington today.

I am accompanied by David J. Elliott, associate director for customs administration with the Procter & Gamble Co., and Leonard Lehman of the law firm of Barnes, Richardson & Colburn, both active members of the Joint Industry Group and certainly known to you.

Chairman **Gibbons**. Yes, sir. A very fine group.

Mr. **Lamar**. The group is a coalition of trade associations, manufacturing firms, and business, and other professional firms, actively involved in international trade with a central interest in customs matters.

Mr. Chairman, it has been 10 years since this subcommittee initiated legislation which became the Customs Procedural Reform Act of 1978.

That act not only established Customs oversight as an important function for the subcommittee, it dealt with Customs matters which we strongly urge the subcommittee to examine again, and we welcome this opportunity to present our views on these issues.

Regarding the authorization of appropriations for Customs, we support the increases in funding approved by the Congress in recent years. Such funding has been needed and must be provided in the future.

Otherwise, services in the area of commercial operations will continue to decline as imports and the workload, and the responsibilities of Customs continue to grow.

One example of that workload is the coming demand for classification rulings under the harmonized system. The Joint Industry Group has indicated its support of the harmonized system and has presented to the subcommittee specific recommendations for implementing legislation.

I believe those recommendations have been given to the staff, but we ask that they be put in the files of the Committee for consideration when you return to this issue later in the year.

Chairman GIBBONS. All right. Fine. Thank you.

Have you all looked over the harmonized system that they are coming out with, Harry? Does it meet with industry's approval?

Mr. LAMAR. Yes, we have, Mr. Chairman, and the Joint Industry Group has indicated to the subcommittee, in written correspondence, that we certainly support the implementation of the harmonized system.

We have some changes to suggest in the Administration's implementing proposals, and I ask that those be included in the files of the committee.

Chairman GIBBONS. They certainly will be.

Mr. LAMAR. But we do feel that this will meet the overall interest of the business community in the United States. The Joint Industry Group has followed very closely the negotiations of the harmonized system, and we do think it will be in the U.S. interest.

Mr. FRITZ. If I might, we also back it up, but we emphasize the fact that it should be implemented as soon as possible so we know the beginning date, because you are not going to get it in if it does not get in till—we feel we need at least 6 months, and that was not part of my submission but I thought I would mention that to you.

Chairman GIBBONS. All right.

Mr. FRITZ. It is a very difficult thing, to put in a whole new system. Excuse me.

Mr. LAMAR. Further, regarding resources, Mr. Chairman, we strongly urge the subcommittee to reject the current recommendations of the administration to extend the Customs' user fee on cargo beyond fiscal year 1989. I want to make clear, I am speaking of the 0.22 percent fee on the value of imports.

Our written statement reiterates why we continue to oppose the user fee, and any extension or coverage of it.

The group believes that the leadership of the Customs Service should be commended for the programs being undertaken to automate Customs operations.

Our group has been instrumental in working with Customs on programs such as periodic entry. However, as might be expected, some members are concerned that automatic data programs can have unintended impacts on important segments of the importing business community, and I believe some of the associations will be addressing those problems.

Regarding operations, and to some extent enforcement, we urge the subcommittee to see to it that no organization changes be made with regard to the Office of Regulations and Rulings.

The reasons are spelled out in our written statement. One aspect of the operations of the Office of Regulations and Rulings is the failure of Customs to observe the legislative directive in the 1978 act to promptly and fully publish rulings. We urge the subcommittee to require Customs to publish its rulings so that the public may be better informed regarding legal positions to be taken by Customs.

Regarding further enforcement activities, we recommend that the Trade Subcommittee continue its oversight of Customs' attempt to redefine fraud by administrative fiat.

And I know this came to the subcommittee's consideration during its consideration of the scofflaw provision, and I request, Mr. Chairman, that our letter to the Customs on this issue be made a part of the committee files.

Chairman GIBBONS. Certainly. Without objection.

Mr. LAMAR. Regarding the scofflaw provision, Mr. Chairman, the Joint Industry Group continues to feel that section 592 already has a multiple offender base.

The severity of the potential penalties under section 592, coupled with the possibility of a refusal to mitigate such penalties because of prior violations of Customs law, all of these are fully sufficient deterrents to the multiple offender situations to which the proposed scofflaw provision is apparently directed.

I am aware that the Committee could not go along with us on H.R. 3. We hope that you will reexamine this matter when the bill goes to the conference.

Further regarding enforcement policy, the group requests that the subcommittee examine the use of the special seizure authority granted the U.S. Customs Service in the International Drug Enforcement Act of 1986.

We did inform the committee of our concern about the misuse of the special forfeiture and seizure authority in commercial operations, but despite some language amendments to the provision, we feel that our worst fears have been realized, and despite the assurances given, to the contrary, we feel that Customs intends to misuse this special seizure and forfeiture authority.

And finally, Mr. Chairman, the International Trade Commission investigation of rules of origin has been mentioned previously, and we thank you for requesting that study. We feel it will be most useful in looking at rules of origin problems in the future, and again we ask that our submission to the International Trade Commission be made a part of your committee files.

Chairman GIBBONS. All right.

Mr. LAMAR. Thank you, Mr. Chairman. It is always an honor to appear before you and the subcommittee, and thank you for the privilege.

[The statement of Mr. Kumm follows:]

STATEMENT BY KENNETH A. KUMM, CHAIRMAN OF THE JOINT INDUSTRY GROUP BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, HEARINGS ON FY 1988 BUDGET AUTHORIZATION AND OVERSIGHT FOR THE U.S. CUSTOMS SERVICE, MAY 12, 1987

Mr. Chairman, Members of the Subcommittee on Trade, my name is Kenneth A. Kumm. I am Chairman of the Joint Industry Group, a coalition of trade associations and U.S. manufacturers and other business and professional firms which are involved in international trade, and which have a central interest in customs matters. The Joint Industry Group appreciates very much the opportunity to present its views at this hearing on budget authorization for and oversight of the U.S. Customs Service and other agencies. The trade associations which support the views expressed in this statement are listed in an attachment.

Mr. Chairman, it is appropriate to note that it has been ten years since this Subcommittee on Trade initiated legislation, needed legislation, which became the Customs Procedural Reform Act of 1978. That Act not only established customs oversight as an important function for this Subcommittee, its provisions dealt with some of the customs issues which the Joint Industry Group would strongly urge the Subcommittee again address in its oversight activities.

We believe that the annual authorization of appropriations and accompanying oversight review are essential to a U.S. Customs Service that is both funded and administered in a manner consistent with today's difficult challenges to adequate enforcement of laws and regulations governing the entry of people and goods into the United States. At the same time, the exercise of your authorization responsibilities and your oversight activities are just as essential to an adequately funded and well-administered Customs Service equal to the task of facilitating the flow of commerce of the United States in a manner consistent with the growing interdependence of national economies and with the advancing technologies for examining, identifying, classifying and documenting and efficiently processing international commerce for customs and tariff, trade statistics, transportation and other purposes.

Adequate Funding of Commercial and Enforcement Operations

As a coalition of various trade associations and firms in the private sector the Joint Industry Group is very much aware of the need for budgetary constraints concerning government expenditures. As an informal coalition we do not attempt to recommend specific funding levels for the U.S. Customs Service. We have noted that in recent years the relevant committees in both Houses have provided funding for the U.S. Customs Service above the levels requested in the President's budget, and we support those increases in funding levels and believe such expenditures are needed.. Such funding levels have been needed to prevent further declines in services in the area of commercial operations which have not been adequately funded and staffed as imports and the workload and responsibilities of the U.S. Customs Service have grown. Seaport and landport congestion due to lack of adequate staff along the U.S. - Mexican border and at West Coast ports and airport congestion for both passengers and cargoes have continued to be a problem.

For these reasons and others we consider the budget request for FY 1988 to be unrealistic in terms of the the reduced resource levels for commercial operations such funding would entail. For example, with the anticipated implementation of the Harmonized System increased demands will be placed on the entire structure of commercial operations in the Customs Service. The central core of classification of goods for tariff, quantitative limitations and statistical purposes is being replaced with an entirely new system. It is different in underlying principles and in detailed applications from the present system. The import specialists in the Customs Service will be called upon in the remainder of this year and beyond to provide literally tens of thousands of binding interpretations of this commodity classification system for the business community. While the U.S. Customs Service and other agencies involved have undertaken commendable training and general education programs regarding the

Harmonized System, such programs have been under the same budgetary restraints that apply to commercial operations as a whole. The workload that will evolve once the Harmonized System actually becomes effective is simply not addressed by any Customs budget that decreases online customs employees.

We note that the Senate Finance Committee has already recommended an increase in authorization of appropriations for the Customs Service. The Joint Industry Group believes that such a funding level is far more realistic given the existing and anticipated workload in the Customs Service for both commercial operations and enforcement.

As an aside, we congratulate the Subcommittee and the full Ways and Means Committee for dealing with the Harmonized System implementation in H.R. 3. The Joint Industry Group has presented specific legislative recommendations to the Subcommittee, and we request their favorable consideration at the appropriate time.

Enforcement vs. Commercial Operations

The Joint Industry Group notes that there have been changes in the description of programs covering commercial operations as required by the enactment of the customs user fees in the 1986 Omnibus Budget Reconciliation Act. That is, "commercial activities" to be funded from the Customs User Fee Account include the commercial activities currently provided for in the Inspection and Control, Tariff and Trade and Investigation activities. Despite this new distinction, the Joint Industry Group feels that those commercial operations related solely to the facilitation of commerce through the port area and customs authority into the commerce of the United States will remain subject to underfunding in favor of strictly enforcement operations. We submit that this new description considerably overstates "user benefits", if any, extended to the members of the business community clearing goods through customs.

Customs User Fees Should Be Allowed to Terminate in FY 1989

In this regard, the Joint Industry Group reiterates its strong opposition to the customs user fee on commercial operations enacted last year. We understand the budgetary constraints and procedural requirements which made the temporary enactment of the customs user fees almost inevitable. We are gratefully aware of the opposition of many members of this Subcommittee and the full Committee on Ways and Means to the customs user fee. We strongly urge this Subcommittee to reject the current recommendations of the Administration regarding extending the customs user fee beyond FY 1989 or any extension of coverage.

The Joint Industry Group is opposed to customs user fees or import fees which subject the United States to claims of violations of our GATT obligations, a charge that has been brought against the customs user fee by our trading partners. We oppose such fees because the benefits of duty free access, not just the market access but the simplified entry procedures possible, to the importing business community are completely negated by such fees. Ultimately, U.S. exporters will experience similar or even higher imposts on their export sales, either through retaliation or the adoption of mirror import taxes by our trading partners.

Progress in Automation of Customs Operations

The Joint Industry Group, because of its concern for the adequacy of resources for commercial operations, but also because of the ultimate and inevitable efficiencies that will come, believes that the leadership of the Customs Service deserves to be commended for the programs being undertaken to automate customs operations. We support the determination to fully automate and modernize customs commercial operations to the full extent made possible by advances in data processing technology. In this regard we applaud the decision to go ahead with the pilot test involving IBM in the periodic billing system, as requested by the Group.

At the same time, it is important to avoid the temptation to reduce staff levels and operational support before the benefits of automated programs can be realized. While reduced staff levels and operational changes can be anticipated from data process automation within Customs, the basic programs in commercial operations must be made to function well, or function, period, before wholesale staff reductions and reorganizations are attempted. Moreover, automation programs can have unintended impact on important segments of the importing business community, small importers and independent brokers, often not in a position to benefit immediately from automated data processing systems and programs designed without their interests being fully considered. We urge the Subcommittee to indicate to the U.S. Customs Service its own concern in this regard.

Possible Elimination of the Office of Regulations and Rulings

One example of the Joint Industry Groups concern that changes in programs and organizations not be undertaken with out sufficient notice and opportunity to comment has to do with the Office of Regulations and Rulings (OR&R).

The Joint Industry Group is particularly concerned about proposals that are apparently under consideration as part of the "Day 1/Day 2" program for reorganizing Commercial Operations within the Customs Service. Apparently this proposal would transfer all legal interpretation functions performed by the Office of Regulations and Rulings (OR&R) to the Chief Counsel of Customs, who is under the supervision of the General Counsel of the Treasury Department, rather than the Commissioner of Customs. This proposal is apparently being made without any reference to the importance to the private sector as well as the Customs Service of the technical administrative functions performed by the Office of Regulations and Rulings. In recent years, the objective, quasi-judicial role of OR&R has been systematically suppressed. As an apparent matter of policy, the Office of Regulations and Rulings has assumed an adversarial role and seems to be required, at all costs, to support the initial administrative positions taken by Customs field officers on both technical and enforcement questions.

As far back as the Customs Courts Act and Customs Administrative Act of 1970, the U.S. Congress recognized the need for objective administrative review to resolve controversy between the Customs Service and the private sector on questions of legal interpretation, in order to save the Government as well as importers and others the costs and burdens inherent in litigation. One of the objectives of the significant administrative revisions undertaken by the 1970 legislation was identified as enabling the Customs Service "to provide more meaningful administrative review" (House Report 91-1067, 91st Cong.,2nd Sess., page 10 (May 11, 1970)). Indeed, that same report stated the objections of the Committee to foreshortening the time period on the processing of entries prior to liquidation, because "such a limitation would conflict with this bill's primary objectives, to resolve differences between the Government and the importing public at the earliest possible stages, at the least possible cost, and thus to eliminate the necessity to resort to litigation in the Customs Court in all but cases of truly irreconcilable differences" (Id. at page 24)

The underlying community interest in objective administrative review procedures on Customs legal questions is not limited to such technical matters as classification, valuation, and country of origin. As part of the amendments to Section 592 of the Tariff Act that were enacted by the Congress in 1978, Congress provided (19 U.S.C. {1592 (b)(2)) that a person subject to a penalty claim under that section "shall have a reasonable opportunity under Section 1618 of this title to make representation, both oral and written, seeking remission or mitigation of the monetary penalty", and, at the conclusion of Section 618 proceedings, "the appropriate Customs officer shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law upon which such determination is based".

With the tremendous upsurge in the volume and complexity of international trade over the past generation, the importance of independent administrative review of legal questions arising in the course of day to day Customs operations, as a vehicle for resolving controversies at the earliest possible stage and limiting litigation to truly irreconcilable differences, is more important than ever, both to the Government and to the private sector. The Customs Service and the Treasury Department have repeatedly affirmed the propriety of placing the responsibility for such administrative review functions within an Office of Regulations and Rulings consisting of legal experts. These legal experts in OR&R are under the direct supervision and responsibility of the Commissioner of Customs, as a part of his responsibility for all Customs operations, rather than in the office of the Chief Counsel, who is an "outside counsel" independent of Customs supervision and responsible to the General Counsel within the Treasury Department. The responsibilities of the Chief counsel of Customs are totally different from and do not overlap with the OR&R technical functions. As an outside advisor to the Commissioner, the Chief Counsel is concerned with questions of labor relations, liaison with the Department of Justice where litigation arises, personnel problems, contract drafting and interpretations, and similar matters that bear no relationship to the laws that fall within the operational responsibility of the Customs Service. The latter laws are interpreted by OR&R as experts and as spokesmen for the Commissioner of Customs, in a role that is analogous to the role of a vice president-general counsel "in-house", within a corporate management structure.

As recently as May 5, 1975, shortly after the technical experts within OR&R had received recognition of their legal responsibilities through conversion of their positions to full attorney status within the U.S. Civil Service, the then General Counsel acknowledged that the recognition of OR&R functions as legal functions "does not require the transfer of these attorneys to the Legal Division, Department of the Treasury, and placed (sic) under the direct supervision and control of the General Counsel". Any reversal of that position at this time would accelerate the likelihood that OR&R technical interpretations would become adversarial decisions designed to support Customs initial decisions, rather than the independent quasi-judicial reviews that they were intended to be.

Legislative Guidance Recommended. We urge this Subcommittee to take whatever steps may be necessary, including the insertion of appropriate Committee report language within the Customs authorization of appropriations, to restrain the U.S. Customs Service from taking any organizational steps with regard to the functions and placement of the Office of Regulations and Rulings without full consideration by this Subcommittee and the Committee on Ways and Means, in the oversight capacity, with a full opportunity for all interested parties to evaluate that proposal and provide comments regarding its desirability in the public interest.

Developments in Enforcement Issues

The Joint Industry Group strongly supports the strong and effective enforcement of customs and the trade and other statutes for which the U.S. Customs Service is responsible. Recent developments, however, has raised questions concerning actions and proposed actions by the Customs Service and their consistency with Congressional intent in enacting and amending the fraud and penalty provisions.

As this Subcommittee is aware, on December 10, 1986, the U.S. Customs Service published in the Federal Register a proposed amendment to Appendix B to Part 171, Customs Regulations, that would revise the definition of "fraud" to remove the requirement that the violation be deliberately done with an intent to violate the laws of the United States. We are informed that of over sixty comments received by the Customs Service, all but two strongly opposed this attempt to administratively change the statutory basis of the definition of fraud. The Committee on Ways and Means and members of this Subcommittee also have commented on the proposed change by Customs by expressing in the Committee report on H.R. 3, "its intention to retain the present definition in regard to the Secretary's administration of the provisions under consideration (section 872 of H. R. 3)" (Page 281 of Part 1 of House Report 100-40, to accompany H.R. 3).

It is requested, Mr. Chairman, that the Joint Industry Group letter to the U.S. Customs Service commenting on the Proposed Regulations amending the definition of fraud under 19 U.S.C. section 1592 be included in the records of the Subcommittee. The Joint Industry Group recommends that the Trade Subcommittee continue its oversight activity regarding the Customs Service attempts to redefine fraud under section 592 of the Tariff Act of 1930. One of the reasons for recommending such oversight is the relationship between the definition of fraud as being proposed by the U.S. Customs Service and the penalties which would be imposed under the scofflaw provisions.

Customs Scofflaw Proposals. The Joint Industry Group is aware that this Subcommittee, the Committee on Ways and Means and the House has taken a position on the issue of multiple offenders of customs laws, the so-called scofflaw provision, as set forth in section 872 of H.R. 3. The Joint Industry Group, unsuccessfully, attempted to point out that such a change in the application of section 592, the fraud and penalty provision of the Tariff Act, is not needed.

Since this issue may well arise in the Conference of the two Houses on H.R. 3, and since this issue is related to the enforcement activities of the U.S. Customs Service, that is, how the Customs Service presently applies section 592 provisions, we ask your indulgence in very briefly restating our position.

As a result of legislation initiated by this Subcommittee, section 592 of the Tariff Act of 1930 divides all potential violations of the Customs laws into three categories. Each level of offense - negligence, gross negligence and fraud - has a separately defined maximum penalty. The level to which the Customs Service is empowered to impose civil penalties for fraudulent violations of its laws is the highest of any currently provided under U.S. law. Under section 618 of the Act, however, the Secretary of the Treasury is authorized to mitigate statutory penalties to lesser amounts based on what he believes to be mitigating factors. Aggravating factors are also taken into consideration, e.g. Appendix B to part 171 of the Customs Regulations, includes among aggravating factors "prior substantive violations of section 592 for which a final administrative finding of culpability has been made."

The Joint Industry Group submits, therefore, that section 592 already has a "multiple offender" basis. The severity of potential penalties coupled with the possibility of refusal to mitigate such penalties for prior violations are fully sufficient deterrents to the "multiple offender" situations at which the proposed scofflaw is directed.

A provision of section 592, subsection (c)(4) was developed by this Subcommittee to encourage "prior disclosure". This provision sought to establish a program essentially to induce persons having violated section 592 of the Act to come forward and disclose the facts to the Customs Service in exchange for the imposition of a lesser maximum level of penalties. We are informed that some in the Customs Service would like to get rid of "prior disclosure". Certainly the enactment of the scofflaw provision would have a chilling effect on importers who might wish to avail themselves of the "prior disclosure" provision in order to avoid litigation costs to themselves and the government.

The importing business community is made up of hundreds of firms, many of which are frequent importers and exporters who deal in thousands of export and import transactions daily. Their operations could only be successful over time by complying as fully as possible with the customs laws and regulations in each country with which they trade. The scofflaw provision is not needed. Further, its enactment could inadvertently, fatally penalize U.S. businesses which frequently import and which could be put out of business overnight by the acts of well-intentioned but ill-advised, or even a dishonest employee, despite what might be an exemplary record, except for acts, intentional or otherwise, by one or more employees.

Finally, with regard to enforcement issues, the Joint Industry Group would like to call the Subcommittee's attention to a provision of recently enacted Drug Enforcement Act. When first introduced, H.R. 5310 is section 122, relating to forfeitures, contained a section reading:

> (c) any merchandise introduced or attempted to be introduced in the United States contrary to law shall be seized and forfeited.

The Joint Industry Group expressed its concern that the creation of this unlimited seizure authority would eviscerate the limitations on seizures in commercial transactions provided in section 592(c)(5) of the Tariff Act of 1930. Our concern was that the new seizure authority contemplated in section 595a would be used even though specifically proscribed under section 592 of the Act.

During further consideration in the House, additional language was added to exempt from section 595a merchandise subject to seizure under section 592. However, doubts remained concerning the intent of the U.S. Customs Service in insisting on this provision.

The parties interested in the commercial aspects of the Drug Enforcement Act had occasion to meet during consideration of the measure by the Senate. These included representatives of Customs, of both the House and Senate Staffs and of the business community. It was believed that a consensus had been achieved, and that Congress did not intend that the new seizure authority be substituted for the limited authority set forth under section 592 of the Tariff Act of 1930. This was based on an agreement that the parenthetical expression "other than in violation of section 592 follow the phrase "contrary to law", viz.::

> (c) any merchandise that is or has been introduced, or attempted to be introduced, into the United States contrary to law (other than in violation of section 592) shall be seized or forfeited.

We believed that this language strengthened the assurances that the significant limitations made on the ability of the Customs Service to seize merchandise for purely commercial violations would not be emasculated.

Under the date of March 27, 1987, the U.S. Customs Service announced its intention to utilize the section 595a seizure authority in all but a limited number of instances in which there has been a violation of U.S. law. We believe this to be a direct repudiation of Congressional intent. The commercial transactions to which seizure authority appears to be directed have nothing to do with drugs or controlled substances which the Customs Service told the Congress it could not reach under section 592 of the Tariff Act of 1930.

The Joint Industry Group, therefore, request that the Subcommittee examine this issue. We believe that the very concerns expressed by the business community concerning misuse of the special forfeiture and seizure authority in commercial operations by Customs have come to pass despite the assurances we were given to the contrary during the enactment of the Drug Enforcement Act of 1986.

Issuance of Rulings by Customs Headquarters

The importing community is very much dependent on the issuance of legal rulings from Customs Headquarters regarding prospective and current import transactions. It is not unusual for even the least complicated ruling to involve several months from date of receipt of the case at Headquarters to the date of issuance of the decision, and in many cases the delay is far longer.

These delays can be attributed in large part to the fact that staffing in the Office of Regulations and Rulings is at approximately half the level of seven or eight years ago. The Joint Industry Group believes that action should be taken to correct the chronic understaffing in that office so that Customs may more efficiently assist the private sector through the ruling issuance procedure.

Another related problem concerns the manner in which headquarters rulings are made available to the public. The Customs Procedural Reform Act of 1978 requires that all precedential decisions including ruling letters, internal advice memoranda, and protect review decisions be published or otherwise made available to the public. Although a procedure exists for the publication of precedential rulings, that procedure is applied on an *ad hoc* basis with the result that some rulings are never published even though they represent the current thinking of Customs, and thus will be relied upon by Customs in subsequent transactions involving similar issues. While many decisions of the Customs Service are available to the public on microfiche, the number of published decisions has declined each year from 475 in 1979 to 54 in 1985. The public is less informed than it was before the 1978 Act.

Since these rulings will invariably affect the public, the Joint Industry Group recommends that Customs should be required to make a much greater effort to publish its rulings on a broader scale either in full or in abstracted form so that the public may be better informed regarding the most current legal positions adopted by Customs.

Rules of Origin

Finally, Mr. Chairman, we wish to express our appreciation for the investigation by the U.S. International Trade Commission on standardization of rules of origin, which was initiated at the request of the Chairman of this Subcommittee. The request and the investigation is recognition that the growing use and significance of laws and international agreements requiring origin determinations make this issue important.

In the submission of the Joint Industry Group to the U.S. International Trade Commission (Commission), we concluded:

> Country of Origin determinations pervade many disparate areas of Customs law including marking, government procurement, quotas, exemptions, etc., and is critically important for tariff and labeling reasons.
>
> Rules of origin are distinct from standards of preference. A rule of origin only requires determination of the country of origin of a given product. Standards of preference carry out U.S. trade policy and vary with differing Congressional purposes. Standards of preference are always ~~found~~ in combination with rules of origin and occur in such statutes as the Caribbean Basin Initiative, TSUS General Headnote 3a, and the Generalized System of Preferences. These various statutes requires that not only a product be from a given country but that a certain proportion of its production occur in the beneficiary country.
>
> Overwhelming judicial precedent defines the country of origin of a product as that country in which the product was last substantially transformed into a new and different article of commerce. Substantial transformation remains the most viable and commercially relevant rule of origin. When normal commercial usage in trade and commerce is applied, logical results are obtained. Addition of other tests only complicates this rule (for origin) unnecessarily....
>
> ...The Joint Industry Group has specifically excluded the "by a substantial manufacturing or processing operation" concept as being both unnecessary and inappropriate. (Rather, we recommend that)... in the event that the processing or or manufacturing of an article is sufficient to result in

> a change in the six-digit classification of such an article under the harmonized commodity description and coding system (assuming its adoption), such change in classification should be regarded as a substantial transformation. However, (we do not feel) that the absence of such a change of classification (should be regarded) as evidence that such article has not been substantially transformed.

We request that our submission to the U.S. International Trade Commission be made a part of the files of the Subcommittee on this issue, and we recommend that the Subcommittee continue its active oversight consideration of rules of origin and rules of preference along the lines suggested in our brief.

Mr. Chairman, thank for permitting us to participate in these hearings. The Joint Industry Group stands ready to work with the Subcommittee on the issues here discussed and on other issues relevant to the Subcommittee's oversight activity concerning the administration of U.S. Customs laws, which are coming to play an increasingly vital role in our national economy.

* * * *

ASSOCIATIONS OF THE JOINT INDUSTRY GROUP SUPPORTING THE STATEMENT BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS IN THE HEARINGS OF AUTHORIZATION OF APPROPRIATIONS FOR AND OVERSIGHT OF THE U.S. CUSTOMS SERVICE, MAY 12, 1987

AEROSPACE INDUSTRIES ASSOCIATION
AIR TRANSPORT ASSOCIATION OF AMERICA
AMERICAN ELECTRONICS ASSOCIATION
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
AMERICAN RETAIL FEDERATION
AUTOMOBILE IMPORTERS OF AMERICA
COMMITTEE FOR PRODUCTION SHARING
COMPUTER AND BUSINESS MANUFACTURERS ASSOCIATION
COUNCIL OF AMERICAN-FLAG SHIP OPERATORS
FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA
INTERNATIONAL FOOTWEAR ASSOCIATION
INTERNATIONAL HARDWOOD PRODUCTS ASSOCIATION
MINNESOTA WORLD TRADE ASSOCIATION
MOTOR VEHICLE MANUFACTURERS ASSOCIATION
NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS
NATIONAL BONDED WAREHOUSE ASSOCIATION
NATIONAL ASSOCIATION OF FOREIGN TRADE ZONES
NATIONAL RETAIL MERCHANTS ASSOCIATION

Chairman GIBBONS. Thank you. Next, the American Association of Exporters & Importers.

STATEMENT OF JOHN PELLEGRINI, CHAIRMAN, CUSTOMS POLICY COMMITTEE, AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS

Mr. PELLEGRINI. Thank you, Mr. Chairman, members of the committee.

My name is John Pellegrini. I am a partner in the law firm of Ross & Hardies. I am a director of the American Association of Exporters & Importers, and chairman of its customs policy committee.

AAEI, as I hope you already know, is a national organization of importers and exporters involved in a wide variety of products. AAEI members also include industries and firms which service importers and exporters such as customs brokers, attorneys, banks, and so forth.

I will merely summarize our written testimony and hope that the full testimony will be submitted for the record.

Chairman GIBBONS. Yes, sir. It will.

Mr. PELLEGRINI. Thank you.

We are pleased to have this opportunity to address the Customs Service fiscal 1988 budget, as well as the general subject of committee oversight.

Generally, AAEI sympathizes with Customs Service employees. In spite of the increased demand for drug interdiction activities, increased emphasis on commercial enforcement, especially in the areas of textiles, apparel, and steel, and increased numbers of entries to process, the administration continues to propose budgets which would cut Customs' staffing levels. This year, unfortunately, is no exception.

Customs, and the trade community, a class which includes domestic industry impacted by imports, faces great difficulties in terms of imports and import processing.

It is easy to know what the problem is. The problem is increased emphasis on narcotic interdiction and budgetary pressures, which combined, have led to an unfortunate neglect of commercial operations.

AAEI opposes the drastic cuts in Customs staffing which are required by the administration's fiscal year 1988 budget, for a number of reasons.

First, the Customs Service has put an appropriate emphasis on automation. However, automation is not a panacea. Automation can result in efficiencies, and can result in a better use of human resources. However, automation cannot replace qualified import specialists and qualified inspectors. A computer program cannot examine goods, classify merchandise or issue rulings. Customs is to be applauded for its efforts to bring Customs into the 20th century, but it must recognize that machines can only assist the human functions such as inspection and analysis. It cannot replace the humans that perform those tasks. Customs clearance will remain a labor-intensive task.

This morning I was reading the written statement of the American Institute of Iron & Steel, and was surprised to find something that we agree on. That is, Customs needs more people. Computers will not replace inspectors, certainly computers will not replace qualified experienced import specialists.

The Senate has rejected the proposed reduction in staffing levels, and we urge that this committee do likewise. In fact, AAEI believes that more personnel are necessary, not fewer.

Let's talk a minute about user fees. In the 1988 budget, the administration proposes an extension of the user fee, indefinitely, at 0.22 percent ad valorem. At the same time, as we have said, the budget proposes fewer personnel for Customs.

This seems, to us, to undercut Customs' previous assertions that the imposition of user fees would ensure adequate commercial service. Adequate funding without sufficient personnel will do nothing to relieve the strain on commercial operations, and will not satisfy the congressional mandate, which accompanied the enactment of user fees, that the Service provide adequate staffing and service.

If left unchanged, the 1988 budget will jeopardize the Nation's need for competent, prompt, and efficient clearance of imports and exports.

It must not be overlooked that Customs is a revenue-producing agency. In 1986, for example, Customs collected $14 billion in revenues for the General Treasury.

Expressed a different way, Customs returned $20 for every $1 that was appropriated. It should be kept in mind that the $1 would not all go to commercial operations. A conservative estimate is that 50 percent, or less, was devoted to commercial operations, yet it was the commercial operation that collected the $14 billion. So, in reality, it returned perhaps close to $40 for every dollar of appropriations.

It must also be kept in mind that more recently, Customs has started to charge importers for inspection and clearance, something it did not do until recently.

These, in the past, were costs which were absorbed by the Government as part of its budget. What all this means is that the trade community pays dearly for adequate service. It should get that service.

Skipping to oversight, I will pick up a couple of things that Mr. Lamar has already commented on. First is Customs overwhelming emphasis on enforcement, and perhaps more importantly, an inappropriate choice of the tools of enforcement. Two example, both of which Mr. Lamar mentioned, highlight this misplaced use of tools.

Customs is flouting congressional intent by unilaterally attempting to change the definition of fraud under the Customs civil penalty, section 592 of the Tariff Act of 1930, and, second, it is using the seizure authority in section 596(c) of the Tariff Act of 1930, legislation enacted by the Anti-Drug Abuse Act of 1986, to seize commercial goods which have no connection with drug-related activities. And after reading the committee reports on that legislation, it seems clear to me that the Congress was quite clear, that the additional authority was to be confined to drug-related activity, yet almost all seizures of commercial properties now are made under that section rather than Section 592.

The difference, of course, is that there are a great number of procedural safeguards in the section 592. A seizure is not as easily made. Nevertheless, Customs uses section 596(c), not 592.

Another area where we believe that the committee should exercise oversight is in the area of rulings. The apparent neglect by Customs of its commercial operations does not only impact clearance of goods. It also impacts on the ability of an importer, or an exporter, in the country of origin area, and sometimes domestic industry, to obtain rulings in a prompt manner.

Importers rely on binding rulings issued by Customs in setting prices, and perhaps more importantly, ensuring the admissability of merchandise which an importer plans to purchase.

A ruling request which raises substantive legal and factual questions now takes 6 to 9 months at a minimum. This is simply too long.

Further, more private rulings are necessary because the number of published rulings—and published rulings are ones which the importing public in general can rely on has decreased. Therefore you need more private rulings. The delay in rulings seems to us to be chiefly laid at the cutbacks in professional staff in the Office of Rulings and Regulations, and we believe this is another example of misplaced priorities within the Customs Service.

The Customs Service mentioned one of their new initiatives, Day One. AAEI, and others, have had some insights into what that might mean, and the one comment we would have is we would hope the committee would ensure, that when there are new automation initiatives in Day One, and perhaps there will be periodic payment of duties, and so forth, that those benefits be available to medium and small-sized importers, not only the larger importers.

While recent Service actions in bringing the importing community into changes such as they did with the recent user fees are encouraging, these will be hollow gestures if the proposed budget cuts are implemented.

Reduced staffing, increased political pressure to stop the flow of drugs, and increased pressure by the administration to cut costs will lead to even greater demands on the overworked men and women of the Customs Service.

This committee, and Congress, can increase the efficiency of Customs by exercising its oversight authority to oppose reductions in staff and render Customs more responsive to the needs of importers and exporters, and domestic industry.

The association, and importers in general, ask you to do this, and look forward to working with the committee, and with Customs to achieve these goals. Thank you very much.

[The statement of Mr. Pellegrini follows:]

STATEMENT OF JOHN PELLEGRINI, DIRECTOR AND CHAIRMAN, CUSTOMS POLICY COMMITTEE, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Good Morning, Chairman Gibbons, members of the Subcommittee. I am John Pellegrini, partner in the law firm of Ross & Hardies. I am a Director of the American Association of Exporters and Importers (AAEI) and also Chairman of its Customs Policy Committee. The AAEI is a national organization of approximately 1100 U.S. firms involved in every facet of international trade. Our members are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear, foodstuffs, automobiles, and wines. AAEI members are also involved in the service industries which serve the trade community such as customs brokers, freight forwarders, banks attorneys and insurance carriers. AAEI is the closest observer of the U.S. Customs Service.

We are pleased to have this opportunity to address the operation of the U.S. Customs Service and its budget for Fiscal Year 1988. The funding and management of Customs' commercial operations are of great concern to AAEI, as our members deal with U.S. Customs on a day-to-day basis.

AAEI and Customs have always dealt with each other in a direct, honest, usually harmonious, and always mutually respectful, manner. Due to this longstanding relationship, AAEI does not hesitate to point out problems to or ask questions of Customs. We believe both sides, as well as the public, greatly benefit from this exchange and we are pleased to say that, through discussion, many specific problems are resolved. Although many of the smaller problems and a few of the larger problems are resolved, Customs and the trade community face greater difficulties every day. Statement of the problem is simple: increased emphasis on narcotic interdiction and budgetary pressures have led to neglect of the commercial aspects of Customs.

AAEI sympathizes with the Customs Service. Inspite of increased demands for drug interdiction, increased emphasis on commercial enforcement (especially in the areas of textiles, apparel and steel) and more and more entries to process, the Administration continues to propose budgets which would cut Customs staffing levels. This year is no exception.

The Administration's budget of for Fiscal Year 1988 again proposes drastic cuts in Customs staffing. The proposed would will reduce Customs personnel from an estimated level of 15,177 positions in 1987, to only 13,169 positions in 1988, a reduction of over 2000 full-time positions. This attempt to cut-back the staffing and thus, the capacity of the second largest revenue-producing agency in the U.S. government is unwarranted and counterproductive. No doubt the Customs Service will again support these cuts, maintaining that it can do 'more with less'. We respectfully disagree.

AAEI agrees with Customs that automation can result in efficiencies and better use of human resources. However, given the Automated Commercial Systems' current and projected capabilities, it cannot replace qualified import specialists or inspectors. A computer program cannot examine goods, classify merchandise or issue rulings. Customs is to be applauded for its efforts to bring Customs into the 20th century, but it must recognize that machines can assist human functions such as inspection and analysis, not replace the humans who perform the function. Customs clearance will remain a labor intensive task.

The large cut in staffing proposed in the FY 1988 Budget is even more perplexing in light of the user fees proposed by the Administration and enacted by the 99th Congress. Last July, Commissioner von Raab responded to a series of questions submitted to Customs by Senator Danforth. On the issue of user fees, Commissioner von Raab stated, "[T]he proposed fees cover only costs of providing services, not the enforcement initiatives from which everyone benefits. The included costs reflect Customs commercial operations, including inspections, the processing of the paperwork related to imported merchandise and revenue collection." Once the .22% ad valorem fee was passed, the Administration conceded that the expected $790 million in revenues exceeded the cost of Customs' commercial operations, (about $490 million), thus, the fee was to decrease to .17% in FY 1988 and 1989.

The FY 1988 budget, if adopted as the Administration proposes, would extend the user fee indefinitely at .22% ad valorem, while providing for less service due to decreased staffing. This undercuts previous Customs and Congressional assertions that the imposition of user fees would ensure adequate commercial service. Adequate funding without sufficient personnel will do nothing to relieve the strain on commerical operations and will not satisfy Congress' mandate in enacting user fees that the Service provide adequate staffing and service. If left unchanged, the obvious contradictions will jeopardize the nation's need for competent, prompt and Administration budget efficient clearance of imports and exports.

AAEI is encouraged by the action of the Senate in passing S.829 which rejects the Administration's staffing cuts. Instead, the Senate bill provides $550 million in salaries and expenses for commercial operations, "sufficient to continue customs services at a level commensurate with that authorized for FY1987." Senate Report No. 23 100th Cong. 1st Sess. 5 (1987). Although AAEI applauds this action and the mandate that for "the Administration [to] desist from again attempting, as it has with regard to FY1987 appropriations, to cut the budget of the Customs Service through unilateral deferrals and recessions that run counter to the expressed will of the Congress", Id., we take exception to the idea that the 1987 staffing and resource levels were adequate. In fact, the opposite is true. Customs' commercial operations were inadequately staffed and neglected in 1987. AAEI believes that more personnel are needed in the commercial operations area.

In 1986, Customs collected over $14 billion dollars in revenue for the General Treasury. In other words, Customs returned $20 for every $1 it was appropriated. And this return was realized without the impositions of user fees. In 1988 Customs is expected to collect $15.2 billion. The U.S. Customs Service is a revenue generating agency, an agency which realizes a 2000% return and has not yet reached the point of diminishing returns. The Administration should not subject the Service to the blind sword of Gramm-Rudman. The trade community pays dearly for adequate service. AAEI urges this Committee and the entire House to refuse the staffing cuts proposed in the FY 1988 Budget.

The imposition of user fees implies a commitment to the trade community for increased staffing. Certainly, more Customs personnel on the commercial side can mean less processing time for entries and quicker answers to ruling requests. Additional personnel, however, will not force Customs to realize that the commercial side cannot take care of itself. Thus, AAEI asks that the funds generated by the user fee be specifically appropriated by Congress for Customs commercial operations.

There is no doubt that Customs is charged with enforcement of U.S. trade laws. The vast majority of importers and exporters are honest and are anxious to work with Customs to improve Customs efficiency. AAEI consistently asks Customs what they are planning and how AAEI can help the Service to achieve its goals.

Unfortunately the Association frequently finds itself surprised by the implementation of a new Customs policy or procedure simply because Customs did not consult beforehand with the trade community. The record shows lack of consultation and business input has caused Customs to delay implementation dates and eventually amend the policies to reflect the legitimate concerns of the business community.

For example, in August, 1984 Customs announced its intention to change the definition of how country of origin is determined, to be effective in 30 days. Regardless of whether Customs was correct in its assumption of legal authority to change the definition, the fact remains that Customs, in the space of one month, expected the trade community to change a seventy-seven year old practice. Customs chose to ignore that due to long lead times typical of importers, merchandise was already manufactured, labelled, paid for and shipped under the old rule of origin. Only after the predictable outcry by AAEI, its sector-specific groups and others, did Customs postpone the effective date.

The second major example involved Customs Directive 3500-06, issued January 9, 1986, which required the filing of a formal entry on all commercial shipments of textiles regardless of value, thereby eliminating use of the informal entry procedures for shipments valued at under $250. The importing public was informed of the directive on January 24, 1986. Only after intense opposition by the trade community did Customs rescind its original effective date of February 1, 1986 and designate March 9 as the new effective date. After a few meetings between Customs and the trade community a clarifying directive, Number 3500-07, was issued on February 28, 1986, a mere eight days before the effective date of the directive. Again, regardless of whether the change was justified, the trade community should be able to expect greater concern by Customs for its legitimate interests.

Much of the controversy and ill-will generated by the above two instances could have been avoided if Customs had solicited business input before issuing the directives. Another example will highlight the present air of neglect surrounding Customs commercial operations. Last Fall, the Service informed AAEI that in its opinion the statutory authority to continue duty-suspensions for certain items entered under Schedule 9 of the Tariff Schedules of the U.S. expired. AAEI understood Customs position and asked that Customs inform the trade community before collecting duty on Schedule 9 items. On December 31, 1986, New Year's Eve, without prior notice, Customs issued a telex at 10:20 p.m. informing the regions that as of 12:01 a.m., January 1, 1987 duties were to be collected on articles entered under Schedule 9. AAEI realizes that December was a busy month for Customs. User fees went into effect on December 1 for one complication. Nevertheless, there is no excuse for Customs shoddy treatment of the trade community.

Customs' overwhelming interest in enforcement has lead to an "us versus them" attitude. The vast majority of importers are honest and benefit from Customs enforcement just as much if not more so than the general public. Increasingly, Customs overzealousness is affecting the business of these honest importers. Two examples highlight this misplaced "enthusiasm":

Customs published a Notice of Proposed Rule Making in the Federal Register, seeking to remove a key part of the defintion of fraud in the regulations accompanying 19 U.S.C. 1592. The present definition of fraud is found in Par.(B)(3), Appendix B, Part 171 of the Customs Regulations and reads as follows:

> A definition is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

Customs proposes to change the definition to eliminate the requirement that the act be done with intent to defraud the revenue or otherwise violate the law. Instead, Customs would define fraud to be the omission or commission of an act done knowingly, i.e. voluntarily or intentionally. AAEI strongly objects to the proposed change and has urged its withdrawal, as have over 60 other parties, in extensive comments to the Customs Service. There is no justification at all for the proposed change which ignores the statute, pertinent and compelling legislative history, as well as judicial precedent, and would inexorably blur the distinction between gross negligence and fraud.

The House Committees recognized this problem and included the current definition of fraud in report language accompanying the scofflaw provision (§872) in H.R. 3. While AAEI is encouraged by the House's reaffirmation of the definition of fraud, we are discouraged by the inclusion of an unnecessary scofflaw provision. The scofflaw section of H.R. 3 requires that the Treasury Department rescind the right of a U.S. business to import for three years if that business is found to have committed three customs violations finally judged to be criminal in nature or involve civic fraud, within seven years. Section 592 of the Tariff Act of 1930 (19 USC 1592) as administered by Customs provides for increased penalties when a company has more than one violation. Denying any U.S. firm the right to import would disrupt world trade and damage, perhaps irreparably, the U.S. economy. U.S. Customs supports the scofflaw amendment without considering the effect the piles of paperwork and countless hours of litigation will have on Customs' strained, non-automated resources.

Customs enthusiasm to "shoot first and ask questions later" is manifested by a recent directive from Customs Headquarters. The directive, issued March 27, 1987, attempts to clarify inspection and seizure practices at the ports. The directive informs the ports that section 1595 a(c) of title 19 of the U.S. Code, which was added by the Anti-Drug Abuse Act of 1986, should be used to seize and forfeit restricted or prohibited merchandise without judgment on a penalty claim. Customs is making no attempt to limit the use of this new provison to drug-related merchandise as Congress intended.

AAEI opposes use of this section for other than narcotic-related seizures. Section 1595 a(c) does not contain the due process constraints found in section 1592 and its use violates the intent of Congress as evidenced by the legislative history of the Anti-Drug Abuse Act of 1986. During the debate over passage of the bill the following conversation took place between Congressmen Ron Wyden and Jim Wright:

> Mr. WYDEN: As I read this legislation, legitimate goods, which are controlled by quotas or other legal restrictions could be included in this definition.
>
> As I understand it, Mr. Leader, it would not be your intent to include these kinds of legal and legitimate goods in the restrictions under this bill.
>
> Mr. WRIGHT: If the gentleman will yield, it emphatically is not the intent of the authors of this legislation to include that kind of merchandise under the terms of the bill. The focus of this is to attack the importers of illegal substances, not legitimate importers. The intent was not to include legal merchandise under the definition of controlled substances. The intent of this legislation is to control the importation and trafficking of illegal drugs into this country and within this country. That is its purpose. That is what the bill deals with.
>
> Mr. WYDEN: One other question, if I might, just very briefly, what would be your view with respect to customs practices as well, Mr. Leader, that the customs law with respect to legitimate goods would not be changed as well?
>
> Mr. WRIGHT: That clearly is the intent of this legislation. You have pointed out a problem that was never intended by the drafters of this bill. Search and seizure authority should be narrowly drawn and it is certainly not the intent of the sponsors that imports of legitimate goods who might technically violate some customs law through simple negligence should be treated on a par with the importers of illegal drugs.

132 CONG. REC. H9458,9459 (daily ed. Oct. 8, 1986).

Customs is relying on this section 1595 a(c) to make seizures without evidence of drug-related activity in direct contravention of the express intent of Congress.

The apparent neglect of Customs of its commercial responsibilities impacts on the trade community in other ways as well. Importers rely on binding rulings on classification and valuation in setting price and in ensuring the admissability of proposed purchases. A ruling request takes six to nine months at which it raises substantial questions of law on fact. This is simply too long. More individual rulings are necessary because the number of rulings published has steadily decreased in the last few years which may be relied on by the general public. This is due to cutbacks in professional staff at the Office of Regulations and Rulings, another example of misplaced priorities.

To its credit, in recent months Customs has actively solicited and encouraged trade community comments on two related issues. After the 99th Congress legislated user fees, Customs asked the trade community for its input on how the funds could be used to maximize the efficiency of its commercial operations. Customs has held two public meetings, issued interim regulations on the implementation of the harbor maintence fees set to become effective April 1, 1987, and set May 29, 1987 as the deadline for comment. Both initiatives by Customs are good examples of how Customs management should recognize the legitimate interests of importers and exporters.

We hope that the willingness of the Customs Service extends beyond these limited instances. Customs has recently announced something they call the "Day One" program -- a re-evaluation of the manner in which Customs conducts its operations. In its attempt to bring all of Customs into the 20th century, the Service is relying heavily on automation. Customs has stated that it will aprise the trade community of its plans and programs. Exporters, importers and Brokers should receive advance notice of proposed changes in Customs practice and their views should be solcited before changes are completed.

What little AAEI knows so far about "Day One" already has given rise to a few questions about its fairness. The Association urges that Customs pursue a "democratic application of automation". For example, a "periodic entry" test plan will soon be in place for a major U.S. importer. Periodic entry means that rather than a company filling out entry forms and submitting them each day, the forms can be submitted once (or twice) a month for all the entries for that month. The periodic entry concept makes sense, but it will not be available to smaller importers, only large importers already on the automated system via the Automated Broker Interface (ABI) program. As an offshoot of periodic entry, Customs is planning to allow importers to interface electronically directly with Customs. However this program also will be available only to large importers, negatively affecting small importers and independent Brokers.

AAEI expects that before these plans are implemented, they will be discussed with the entire trade community to ensure their applicability and availability to all importers or at the very least that the savings incurring to Customs from the implementation of these programs be used for Customs commercial operations to benefit all importers and exporters.

While the Service's actions to implement the harbor maintenance fees, the user fees and "Day One" efficiently are encouraging, they will be hollow gestures if the proposed budget cuts are implemented. Reduced staffing, increased political pressure to stop the flow of drugs and increased pressure by the Administration to cut costs will lead to even greater demands on the overworked men, women and automated systems assigned to commercial operations. This Committee and Congress can increase the efficiency of Customs handling of international trade by exercising its oversight authority to oppose reductions in staff and render Customs more responsive to the needs of importers, exporters and domestic industry. The American Association of Exporters and Importers asks you to do so and looks forward to working with the Committee and Customs to achieve these goals.

Thank you.

Chairman GIBBONS. Thank you, Mr. Pellegrini.

We are not going to Mr. Fritz right now. We had better go vote, and we will come back, Mr. Fritz, for you.

I want to say we have to finish this whole hearing by 2 o'clock because I have to go to the Rules Committee. So if all the witnesses in the future would take that into consideration, we will be right back.

[Recess.]

Chairman GIBBONS. All right. Let us proceed, Mr. Fritz.

STATEMENT OF ARTHUR J. FRITZ, JR., PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION

Mr. FRITZ. Thank you, Mr. Chairman. I am Arthur Fritz, Jr. I am president of the National Customs Brokers & Forwarders Association and the chairman of Fritz Cos., Inc. As you know, our industry as customs brokers provide the private sector interface with U.S. Customs and facilitate the documentation and payment of duties and observance of the laws.

We are licensed, and we have both a legal and fiduciary obligation to Customs. By the way, also, Mr. Chairman, we have submitted a longer statement.

Chairman GIBBONS. All the statements delivered will be printed in full.

Mr. FRITZ. I will be as brief as I can because I know we are under some pressure.

I am here today really because we believe it is vitally important for the Congress to exercise its oversight responsibility over the Customs Service and to enact an authorization bill this year that will direct the agency in the future. We understand the concern of Congress about micromanagement, and we agree. The Customs Service, however, suffers from a management vacuum. The agency gyrates this way and that, unveiling one new program scheme after another, ignoring the realities and necessities of the marketplace, and disregarding the mandates of Congress for the sake of expediency.

We have a lot to say, but I will try to brief, as I mentioned. What is really needed is an authorization bill that goes beyond personnel levels and directs the agency to get back to basics: to set aside its heavy-handedness and to work with the commercial sector cooperatively to secure collection of duties and enforcement of laws; to forget its fly-by-night dreams and theories and develop programs that can be made to work; to apply real resources to meeting its responsibilities and stop waving the magic wand of automation and its elusive promises in every direction.

Sure, Customs must get into the future, but they must do so realistically and not to the detriment of the present. We strongly urge, therefore, Mr. Chairman, the committee to fashion an authorization bill that brings Customs back to work and back to reality.

Basically, most of the comments I had in some areas were covered by Mr. Lamar and Mr. Pellegrini. I would like to briefly just comment on three areas. First is the areas of this Periodic Entry, which is now a pilot program, and also their new Day One concept. We have serious reservations about both these programs. The ABI program now in effect is just in its infancy. Only about 30 percent of the entries are on line in this ABI/ACS program. Even though it is only 30 percent on, sometimes it takes as long as 2 hours from what were supposed to be 15-minute responses.

It would be terrible to let customs now throw this program out, yet start new programs on top of it. Let us get them to make this one work first. The Periodic Entry may benefit a few large importers, but we believe basically it is redundant because the present system already contemplates a paperless entry system. Why would customs need periodic filings if it is going to be paperless in the future, anyway.

As to Day One, it is a little too early to really comment. One of the things we see however is that possibly up to 80 percent of the input could come from unlicensed foreign entities. It is almost unbelievable that they could be thinking this way.

In short, Customs must focus its efforts on the automation that they already have, and I would not want to have them spend their time on anything else until they show some results. In fact, they told our industry, Mr. Von Raab, automate or perish. Not only has Customs spent tens of millions on this ACS program, but our industry has spent millions also. Our firm alone has spent up to about $10 million in development and spent $6 million a year largely to comply and conform with the system. Now they want to put plenty of other things on. We think that this should not be allowed.

I also mention the PAIRED system in my written statement. This is another system that requires authorization. PAIRED program permits the filing of customs entries in one port in order to release goods that arrive in another.

One problem NCBFAA has right off the bat is that it is illegal. There is a statute—19 U.S.C., section 1484(a)(2)(A)—that explicitly requires the filing of the entry in the port of release.

Second, the system as put forth is an attempt to emasculate the in-bond system, which has been working and is a legal system implemented by Customs. This is not just something we surmise. This is stated right in their 5-year plan in 1984.

How, then, is it done? It started in 1984 between Savannah and Atlanta as a test. It is now nationwide. It is still a test. They have never reported back to the Congress. The Congress has asked them to report back the results, and I do not believe they have done so. I do not think they want to because I do not think the results, the answers will be very good.

As far as we can tell, the system is not highly utilized. It started, as I said, in Atlanta. It really is not working. I understand from my people in Atlanta that if the one person key to that program is missing for any reason—from vacation to sickness to whatever—the system breaks down entirely.

Also, it would have a drastic effect on the international infrastructures of many cities today. Not only would inland cities possibly like St. Louis or Minneapolis be eliminated from the international activities they have now, but surprisingly enough, ports like Houston, New Orleans, and Boston would be severely impacted. Believe it or not, according to our figures, about 80 percent of the goods that come into Boston come in through the in-bond system.

That could all be eliminated. What it would do to Boston and its banks and its insurance companies is hard to say.

So we say, look, it is a test; make them show results. It is still illegal, and we are very, very much opposed to anything that would pay one penny for this system this year.

Lastly, I would just mention user's fees. They have been mentioned before. We are concerned with the same thing. OMB has emasculated the intent of Congress. I have heard your comments. I will not push them any further except to smile a little bit with you about them. There should be a dedicated fund. It should be used for Customs services.

We have talked about overtime. Customs mentioned its central examination sites. Of course, they do not mention the importer is bearing all the costs of those central examination sites with no control. We just get "oh, boy, Customs is more efficient." Well, everybody is more efficient if somebody else is paying the bill. So we are very, very concerned that the user's fees should be used for the purpose that you and the Senate Finance Committee intended; that is, for Customs commercial services. The commercial users are paying for them. They have the right to get the results from them. We hear this not only from our industry, but, of course, we represent importers, and to an importer, that was what they believed. They are not arguing so much about the fact that they would like to have them eliminated, as Mr. Lamar said, but given the fact that they may be a fact of life, if they are going to pay the 0.22 percent, why should they not get the benefits of it?

With that, I would say in conclusion that there are some very good things about Customs, particularly the people that they have. Historically, their staffing, their talents have been very good. I think the concern is—and you can look at it—the turnover at headquarters has been tremendous, and we think that is where the problems lie today.

We think if they can get back and understand that the commercial sector is an important part of what the Customs Service is supposed to be doing. It should not just wave the flag of drug interdiction. We are all in favor of stopping the drug traffic, but they are not going to do it by eliminating a lot of people and hoping that somehow the commercial services can be performed by automation. As we said, it is certainly very questionable how well Customs is being run.

Thank you very much.

[The statement of Mr. Fritz follows:]

STATEMENT OF ARTHUR J. FRITZ, JR., PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION

Mr. Chairman. I am Arthur J. Fritz, Jr., President of the National Customs Brokers and Forwarders Association and Chairman of Fritz Companies, Inc., a nationwide company of customs brokers and freight forwarders providing an extensive range of services in international trade. As you know, Mr. Chairman, customs brokers provide the private sector interface with the U.S. Customs Service and facilitate the documentation that is necessitated by the importation of a product, payment of duties and observance of the laws of the United States.

I appear before the Committee today because we believe that it is vitally important for you to hold these hearings, to exercise your oversight responsibility over the Customs Service, and to enact an authorization bill this year that will direct the agencies in the future. We understand the concern of Congress about "micro-management," and we agree. The Customs Service however suffers from a management vacuum. The agency gyrates this way and that - unveiling one new program scheme after another, ignoring the realties and necessities of the marketplace, seizing the high visibility of exotic law enforcement at the expense of its basic, day-to-day responsibilities to commerce and disregarding the mandates of Congress for the sake of expediency.

Mr. Chairman, we have a lot to say about how the Customs Service can be improved, but we will be brief. Suffice it to say that what Customs needs more than anything else is your guiding hand. Previous years have proven that annual hearings and a periodic slap on the wrists are not enough. What is needed is an authorization bill that goes beyond personnel levels and directs the agency to get back to basics: to set aside its heavy-handedness and work with the commercial sector cooperatively to secure collection of duties and enforcement of customs laws; to forget its fly-by-night dreams and theories and develop programs that can be made to work; to apply real resources to meeting its responsibilities and stop waving the magic wand of automation and its elusive promises in every direction. To be sure, Customs needs to look to the future, but they must do so realistically and not to the detriment of the present. Mr. Chairman, we strongly urge the committee to fashion an authorization bill that brings Customs back to work and back to reality.

There are several specific issues that require your attention:

1. CUSTOMS' REQUEST FOR FUNDING. The agency's request for funding and manpower is woefully inadequate. As in year's past, the Customs Service has cited the advances of automation as sufficient to create off-setting economies this year. This is simply untrue. People run the Customs Service and there can be no computer substitute for an import specialist who understands the commerce of a specific product. Nor can we reduce substantially the Office of Rules and Regulations and expect the

public to comply with arcane provisions of Customs law or to resolve troublesome differences over interpretation. And, we cannot tolerate 12-hour delays at a Texas border crossing because of inadequate staffing and funding. The Customs Service has drastically understated its manpower requirements.

2. PERIODIC ENTRY. NCBFAA has serious reservations about the commitment of Customs' time and manpower required by a periodic entry system, let alone to its "Day One" concept of putting all importers directly on-line with the Customs Service. The Automated Commercial System (ACS) is still in its infancy and only now beginning to link professional customs brokers with the Customs Service. Little more than 30% of transactions are processed in this new Automated Broker Interface (ABI) program. Even with this portion automated, brokers have seen release information responses degrade from 15 minutes to two hours. To put aside these half-finished efforts now - much like a child who finds a new toy more intriguing than the old - is to let our expensive investment in ABI fall victim to a short attention span. The periodic entry program - now in "pilot" status - benefits a few large importers and will do this ultimately at the expense of the majority of importers who will have to put up with Customs running two completely different systems of cargo release and document handling. "Day One" will require developmental resources that we doubt will ever get this program off-the-ground, primarily due to fallacies in the concept itself. In

short, Customs should focus its automation efforts on programs that have already been set in motion. Instead of dealing with Day One, Customs should deal with Day Seven - the day of healing and rest.

3. PAIRED. The National Customs Brokers and Forwarders Association has serious reservations about the PAIRED program for many of the reasons cited above; however, PAIRED is also an example of a more serious problem that exists at Customs: an attitude that strict adherence to the statute can, on occasion, be subordinated to expediency.

The Port of Arrival Immediate Release and Enforcement Determination program was initiated in November 1984 as a "test." PAIRED permits the filing of Customs entries in one port in order to release goods that arrive in another. Initially it permitted a customs broker in Atlanta to release goods in Savannah by simply filing an automated entry through the local Customs office. A major obstacle to Customs implementation of PAIRED however is that PAIRED contradicts federal law. The statute - 19 U.S.C. Section 1484 (a)(2)(A) - explicitly requires the filing of the entry in the port of release. Its rationale is clear: there is more to acting as a customs broker than simply filing an entry. A broker must be familiar with the goods and be available to the Customs officials at the port. It is a requirement premised partly on service to the customer, but is primarily designed to assure compliance with customs law and enhance the Customs Service's ability to meet its enforcement responsibilities. Taken to a national scale, Customs officials in Pembina, North Dakota would be faced with trying to reach a customs broker as far away as San Diego, California to clear up problems in the release of a commercial shipment in the local port of entry.

Customs however has embarked on a process of reorganizing the structure of the Service so that it can limit its duties to the ocean ports of our country. This goal was spelled out two years ago in Customs five-year plan calling for termination of the "in-bond" system. The politics of the proposal however are very unappealing. Without inland ports, an entire international trade infrastructure would disappear - banks, importers, brokers and the myriad of businesses whose existence depends on international commerce. And the results would spread to many of the ocean ports themselves. Under PAIRED, New York brokers could clear goods in Norfolk, eliminating the need for many of Norfolk's local international trade businesses. That is why the 5-year plan is unpopular here and why Customs has never sought implementing legislation. Instead the Service has gone about that task obliquely.

PAIRED is part of this strategy. It takes the most problem-free cargo and provides a commercial substitute for "in-bond" movement of commercial goods. This leaves only "problem" shipments, that require closer scrutiny and examination, for in-bond. And, it will dry up the in-bond transportation system, making it undesirable to the shipper and identifying new candidates for staff reductions and port closures by Customs. Finally, in the long-term, an inevitable result of the PAIRED program would be a massive relocation of Customs personnel away from where the cargo is located in order to man locations where the entry filers are located, a result which seems not to have been considered at Customs.

Congress needs to give this program the most careful possible examination. A decision to permit the PAIRED program to become nationwide and permanent has very serious ramifications to the trading system. It should not be implemented in ad hoc fashion, by regulation in defiance of the statute. That is why it is important for the Ways and Means Committee to take an active role. Customs must be instructed to come before this Committee to seek authorizing legislation before it continues for another year with an illegal program.

4. CUSTOMS USER FEES. In 1986, this committee, together with the Senate Finance Committee, responded to budget resolution requirements by establishing a Customs user fee of 0.22 percent ad valorem, based on the appraised customs value of the imported merchandise. That rate was to be dropped to a ceiling of 0.17

percent for FY 88 and FY 89, with provision that the amount could be reduced even further to reflect appropriations below authorized levels for commercial services. The purpose was clear: Congress sought a one-for-one match between the user fee revenues and Congressional appropriations for Customs' commercial operations. To cement this, the Committee established a dedicated fund to which all Customs user fee proceeds must be deposited. That fund was designed solely to fund Customs' commercial operations. Congress wrote into statute the philosophy that importers were paying for Customs services through this fee, even to the point that it forbade collections of charges for inspection and clearance over and above the user fee.

Candidly, NCBFAA opposed the user fee. We believe that it is a tax and nothing else. We stressed that it was GATT illegal and, indeed, that charge will be pursued by several of our GATT trading partners. And, we objected that one segment of the public should not have to bear the costs of providing revenues that were properly the obligation of the general public. It was, we said, tantamount to paying a fee to file your income tax return.

The authorizing committees nonetheless overrode these concerns and it is not our intent today to revisit those issues. We are concerned however that the Office of Management and Budget (OMB) is attempting to undo that work, that Congress is not able to truly "dedicate" the fund, and that we will continue to witness Customs' intransigence to the obligation of applying adequate resources for commercial operations.

To begin, suffice it to say that not one penny of the user fee collected since December has gone to pay for Customs services. In the crush of legislation at the end of the 99th Congress, the OBRA bill (P.L. 99-509) providing for Customs user fees passed almost simultaneously with the FY 87 Continuing Resolution appropriating funds for the Customs Service. Consequently, there was no specific provision in the Continuing Resolution directing that Customs' commercial operations be funded from the user fee dedicated account. These funds are therefore accumulating and are unlikely to be applied to the FY 87 appropriations.

For its part, OMB has claimed this fund as "revenue", dictated that a rescission be requested from Customs FY 87 appropriations, and declared that any application of the present account will jeopardize Gramm-Rudman deficit targets. In essence, the linkage between the Customs user fee and funding of commercial operations has been destroyed this year and OMB is attempting to cut funding even further.

This has resulted in false expectations and budgetary chaos. The Customs overtime situation offers an appropriate illustration.

As we noted, the OBRA law prohibits collection of reimbursement for Customs' overtime costs for cargo clearance. Instead, these costs were to be borne by the user fee account. In fact, Senator Max Baucus (D-MT) succeeded in adding an amendment to make certain there could be no misunderstanding about overtime - it was to be completely and freely reimbursible. After December 1, 1986, the effective date of the user fee statute, Customs granted overtime almost upon request. A sign of this was the fact that many inspectors reached their quarterly overtime "cap" and the agency at the district level was concerned about meeting overtime demand. Now, as Customs has realized that there is in fact no recourse to the user fee account and is unable by law to collect overtime reimbursement, the agency has sharply cutback overtime services. The National Treasury Employees Union has recently circulated examples of the situation in Minneapolis and Laredo that illustrate how critical the lack of funds for inspection overtime has become.

The answers, we believe, are in the alternative: either Congress should eliminate the user fee; or, restructure last year's law to re-establish the link between the fee and Customs' commercial services. The latter may require some technical revision of the reimbursable account concept, more compelling language to ensure that Customs uses these funds as Congress intends, and perhaps some additional fine-tuning. However, for the present, our conclusions are inescapable that the user fee is not working and needs your attention.

5. CENTRALIZED EXAMINATION. We are concerned over an increasing trend towards charging Customs' expenses in clearing cargo to importers. It had been the rule, for as long as anyone could remember, that the usual and ordinary costs and expenses incurred by Customs in clearing merchandise, such as examination and inspection, were treated as a normal part of the costs of operating Customs - as they properly should be. Under the former system, these expenses were charged to the importer only where he requested examination outside the normal channels, for instance, at his warehouse or premises, or after normal Customs operating hours. In these instances, the importer was rightfully charged for Customs' expenses, because he was receiving a clear benefit at his request. However, within the past three years or so, Customs has changed the system, and charges most of these expenses to the importer as involuntary expenses.

"Centralized" examination is an excellent case in point. In a series of directives (generally implemented without benefit of "notice of proposed rulemaking" under the Administrative Procedure Act), Customs has eliminated the element of choice to an importer in selecting the kind of examination (i.e., whether chargeable or non-chargeable) and has also decided that all expenses of such examination must be borne by the importer. See Customs Manual Supplement 3275-01 of January 17, 1983; Customs

Directive 3270-01 of December 3, 1984; Customs Directive 3243-03 of July 8, 1986; and Customs Directive 3270-03 of January 5, 1987 completing the process by establishing privately-operated "centralized examination stations" under which certain cargo must be sent for inspection. We are fearful that under the most recent directive, the private owners of these new stations may, in the absence of proper supervision and regulation by Customs, charge exorbitant and monopolistic fees to importers, whom, it must be stressed, realistically cannot avoid use of these facilities.

Charging the importer such expenses, which traditionally were paid out of Customs' budget, violates the provisions of Annex 5.4 of 1965 Convention on the Facilitation of International Maritime Traffic ("The London Convention"), which entered into force with respect to the United States on May 16, 1967 (18 U.S.T. 410, TIAS 6251). A provision of this Convention states that "the normal services of public authorities at a port should be provided without charge during regular working hours". Obviously, inspection and release of imported goods is a "normal service" of the Customs authorities of most nations, and should not be "privately" charged to the importer.

Additionally, we refer to the relationship between the new 0.22% "user fee" assessed on most entries of imported merchandise under Public Law 99-509 and these expenses of examination. Section

8101(c)(1) of Public Law 99-509 prohibited Customs from imposing charges for cargo inspection, clearance, etc. over and above the new "user fee". Obviously, this prohibits direct charges by Customs of this nature. It is not clear, however, whether the prohibition does or should apply to indirect charges mandated by Customs requirements but collected by the private sector. We have urged Customs that the prohibition should apply in case of "centralized examination station" costs; we are less than optimistic that Customs will agree and we therefore have urged Congress to amend the law in this respect. It is manifestly unfair to charge importers the 0.22% "user fee," dedicated in part to pay for Customs' expenses of inspection and clearance, yet ask importers to pay what are essentially Customs charges for the same functions that Customs formerly performed but are now affected by the private sector.

Finally, NCBFAA has been alerted to instances where, in some districts, across-the-board application of central examination may not make sense. NCBFAA recommends that district directors be given some latitude in establishing centralized examination sites and that great care be taken to avoid needless additional costs and delays.

6. PROPOSED REDEFINITION OF "FRAUD". In a Federal Register notice of December 10, 1986, Customs proposed a radical, illogical and unsound reformulation of the concept of Customs

"fraud" within the context of the penalty and seizure authority contained in the 19 U.S.C. 1592. Customs proposes to remove the traditional requirement of intent to defraud and to substitute a test which requires merely that the alleged "fraudulent" act or conduct was done "voluntarily or intentionally". This is an alarming development to the importing community and one which clearly highlights Customs' obsession with enforcement concerns to the detriment of elementary administrative justice and due process. In our submission to Customs, we maintained that the proposed redefinition of "fraud" would --

(a) arbitrarily reverse a long-standing administrative practice;

(b) completely depart from established law;

(c) substantially and unjustifiably harshen the impact of Section 1592 on the accused citizen;

(d) have the effect of negating the "gross negligence" category of culpable offenses contained in existing law and regulation, leaving only the extreme choices of "fraud" versus "ordinary negligence"; and

(e) comprise an ultra vires attempt to amend the statute, thereby usurping Congress' prerogatives.

We urge that the Committee suppport our objections (shared by many other private-sector groups) and specifically disapprove of Customs' unwise and unsound initiative.

7. "COURIER" PROBLEM. In a Federal Register notice of July 22, 1986 (T.D. 86-143), Customs granted a special favor to the rapidly-growing industry transporting merchandise by international courier or "express air service". This sector has experienced explosive growth, and now utterly fails to resemble the traditional "courier" service of yesteryear which utilized a person travelling as an international passenger to hand-carry documents, data, and similar time-sensitive non-commercial items. Today, the "courier" and "air express" companies go so far as to own or charter their own jet aircraft and to offer all-inclusive, door-to-door service, including Customs clearance, for practically any merchandise.

The July 22, 1986 special procedures allowed these companies to clear goods under informal and consolidated entry procedures and, as a practical matter, on a high-volume 24-hour-per-day basis at major international hubs (e.g., Federal Express' nationwide clearance operation at Memphis International Airport). It must be stressed that these significant operational and economic advantages in clearance are unavailable to importers and their Customs brokers who enter goods under established methods.

Moreover, although Customs insisted in its "final rule" notice that the new procedures "assure the protection of the revenue in accord with all applicable law and regulations", we have serious reservations on this score, and are aware of numerous instances where goods have been cleared utilizing these new procedures in a manner which was in violation of existing law and regulations - quite understandable incidents considering the tremendous volume of clearances effected by the courier/air express group at all hours of the day or night. Should the Committee wish, we would be glad to supplement our submission in detail on this score.

Another issue raised by the special courier/air express procedures, involving the technicalities of import clearance by a licensed broker, threatens serious interference with established broker-client relationships. Responding to the concerns of the brokerage community, in an effort to prevent the unauthorized transaction of Customs brokerage contrary to 19 U.S.C. 1641, Congress enacted Public Law 97-446. Section 201 of this law amended 19 U.S.C. 1484 to provide that the "importer of record" for purposes of Customs entry documentation was limited to (a) the owner of the goods, (b) the purchaser, or (c) a licensed broker designated by either party. The purpose of the amendment was to prevent the unauthorized and unlicensed clearance of goods by "nominal" consignees and to ensure that only the proper party or his licensed broker agent attended to the formalities of

Customs clearance. The law was specifically directed at cargo clearances by courier companies. Unfortunately, Customs has been extremely dilatory in implementing the law by appropriate regulation changes. On December 24, 1985, almost two full years after the enactment of Public Law 97-446, Customs proposed to amend the Customs regulations to distinguish between the consignee named on the "master" airway bill (that is, the single consignee of air cargo shipped on a consolidated basis) from the consignees named on the "house" airway bill (that is, the individual consignees to whom each parcel or piece was addressed). The proposed regulations amendment dealt with the proper party to "designate" a Customs broker to attend to the Customs entry. This is a matter of vital concern to our member brokers, in that it permits the shipper or recipient of the goods to continue to select a broker familiar to them (one who knows their "line" of merchandise and any special problems or requirements attendant upon its clearance) to get the merchandise properly through Customs. In our response to the December 24, 1985 notice, we stressed the direct, inescapable connection between the then-proposed "courier/air express company" procedures and the question of broker designation. We submitted a suggested revision of the regulations section specifically involved governing "consolidated" shipments, and also urged that all entry regulations be reviewed and revised as necessary, to implement the intent of Public Law 97-446. We also stressed the necessity of harmonizing both matters.

Unfortunately, Customs chose to move forward with the courier/air express special procedures, while delaying action on our other concerns. The net effect is that one industry sector has been granted special preferential treatment, resulting in clear economic advantages, while the legitimate needs of another industry sector have been ignored.

CONCLUSION

We are happy to strike a more positive note to end our testimony and to express our appreciation to Customs for its excellent cooperation with our Association in the recently-completed revision of a Customs form of all-encompassing importance authorizing Customs' release of the goods (Form 3461 and 3461-ALT). The exercise took place over a lengthy period; our officials and their counterparts in Customs worked well together to bring the matter to a good conclusion, equally benefitting Customs and the private sector. Our needs, and those of our importing clientele were well-recognized and properly attended to by Customs, and for this we wish to express our gratitude. On the whole, Customs people are among the best and most talented in the Federal service. We think that many of our problems in communication and cooperation with Customs are attributable to a mind-set on the part of the current administration which amounts to an over-concern with "law enforcement". Granting this legitimate concern, this attitude unfortunately overshadows and detracts from our own equally legitimate commercial concerns as well.

Chairman GIBBONS. Thank you.

It almost makes you cry when you get this testimony, that you hear so many, what I assume are legitimate complaints about a service the Government is supposed to be rendering.

For your benefit, I have instructed the staff next year to start the hearings off a little differently and put you on up front and let you all kind of lay over for the Customs when they walk in. So you might get mentally prepared for that.

In the meantime, we will try to do what we can to straighten out this very unattractive situation. We have made notes of all these things. I have asked the staff to give me some reports on them, and we will follow through. I am particularly worried about using the drug laws in the commercial areas because they were meant to be fast and furious and were not, in my opinion, designed to cover the ordinary transactions.

Thank you, gentlemen.

Mr. FRITZ. Thank you, Mr. Chairman.

Mr. PELLEGRINI. Thank you, Mr. Chairman.

Mr. LAMAR. Thank you, Mr. Chairman.

Chairman GIBBONS. Next we have Air Transport Association and Airport Operators Council, Mr. Landry and Mr. Judy.

Mr. Landry, you are first.

STATEMENT OF JAMES E. LANDRY, AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY JAMES GORSON, DIRECTOR OF FACILITATION

Mr. LANDRY. Thank you, Mr. Chairman. I am accompanied here by Mr. James Gorson, the association's director of facilitation.

Much of the testimony here this morning, as well as your own comments, has underscored the general concern over the administration's proposed severe cuts in the budget for the Customs Service, and most particularly the cutback of 2,000 in Customs Service personnel. The administration has requested an appropriation for fiscal year 1988 of $803 million for salaries and expenses, and of that amount approximately $500 million, which would underwrite commercial operations, would be reimbursed by a special fund in the Treasury created by ad valorem and other user fees collected from the importing community and international travelers.

Those fees were imposed as the quid pro quo for an assurance that scheduled airline passengers and importers were going to receive fully adequate Customs services whenever they were needed. Is the Government's commitment to fully adequate Customs services now and in the future being fulfilled? In a word, no.

The Customs Service currently provides about 700 Customs inspectors at airports of entry and pre-clearance airports served by the airlines. At this inadequate staffing level, many travelers have experienced unacceptably long delays. Yet incredibly, despite a clear knowledge of increasing international traffic, the Customs budget calls not for an increase in staffing, but a reduction.

One would assume, in view of the clear and unequivocal commitment in COBRA, that none of those cuts would touch airport inspection staffs. But we have been unable to get any assurance from the Customs Service that they would not be among those cut. In fact, the signs are that they will.

Mr. Chairman, airline passengers began paying $5 fees for Customs services last July, and importers began paying the 0.22 percent ad valorem fee on merchandise last December, in the good-faith belief that Customs staffing and resources would be dedicated at levels adequate to meet the current and future demands of our international passenger and cargo traffic. If that faith is misplaced, then in fairness the user fees should be eliminated or, at a minimum, substantially reduced.

We urge this subcommittee to take all necessary steps to assure that the original commitment is honored and that no diversion of these fees to other Customs activities or other governmental objectives be condoned. Any cutback in service is patently unfair to the millions of users—passengers and importers alike—who have been subjected to the user fees with the proclaimed intention of assuring fully adequate Customs services when and where they are needed.

Moreover, to avoid this looming breach of faith, maintenance of the status quo will not suffice. At least a 10-percent increase in inspectors is needed to process today's passenger and cargo traffic expeditiously, and another 10-percent increase is needed to handle the 10-percent growth now being projected for fiscal year 1988, as we rebound from the temporary slump experienced last year.

Therefore, a 20-percent total increase in Customs inspection staff—another 140 inspectors—would be the minimum requirement at airports during the next fiscal year. Then and only then can we be assured that lengthy inspection delays will end at our airports of entry, that the 45-minute maximum for passenger clearance—the target established by Congress—is consistently met, and that legitimate requests for overtime service are consistently granted.

In our prepared statement, we point out that the improved statutory language dedicating the INS user fee moneys is working better than the earlier Customs version. In fairness to those who have to pay both of these fees, the dedication of the Customs fee should be made equally certain.

This could be accomplished through a detailed clarification of the expenses properly paid with user fee revenue. Unfortunately, the piecemeal enactment of the Customs user fee provisions has produced needless ambiguities on the issue of covered expenses, ambiguities which the Customs Service has interpreted very conservatively. The result, of course, is less service to the paying consumer and more money diverted to other Customs activities.

We have made several suggestions for clarifying or technical amendments to the statute. We urge their enactment. In our statement we have also urged this Subcommittee to take necessary steps to remedy two other matters of great concern to our industry and the millions of consumers who use our services.

First, the lack of sufficient inspectors at pre-clearance and U.S. gateway airports has escalated the need for inspectors to work many hours of overtime. Consequently, inspectors at a number of airports have reached the congressionally mandated overtime reimbursement cap limitations and are no longer available to perform services on an overtime basis. Therefore, airlines are being denied clearance by Customs, which is already causing international concern.

The obvious long-term solution is to provide additional Customs inspectors by making use of the user fee fund. However, even if funds are authorized and appropriated for additional inspectors, it will be many months before newly trained Customs inspectors can be put on line. An immediate solution, and one which the airlines endorse, would be to raise the current Customs overtime reimbursement cap limitation to a higher amount. We also support the remedial measures sought by Mr. Tobias and the Treasury Employees Union with regard to the level of the Customs appropriation for this expense.

Second, we ask that, in light of the storm clouds so clearly placed on the horizon by the fiscal year 1988 Customs budget, a prohibition which Congress prudently included in the fiscal year 1987 Treasury Department Appropriations Act be made permanent. Specifically, Congress last year precluded, through September 30 of this year, any implementation of single 8-hour shifts at airports and mandated that all current Customs service be continued. Those directives should be made permanent. Let it never be said to the world that this country is only open from 9 to 5.

There are other prudent steps that can and should be taken to deal with these chronic Customs problems. For example, in order to provide inspection efficiencies and, over a period of time, substantially reduce the number of Customs inspectors along the United States-Canadian border, the airlines recommend implementation of a joint Customs travelers clearance process. In view of the similarity of the United States and Canadian Customs missions, problems, needs and requirements, such a joint travelers clearance process appears ripe for consideration by this subcommittee.

In summary, we are alarmed by the drastic cuts proposed in the Customs budget and, most particularly, personnel cuts in the face of continuing increases in international air passengers and air freight. Importers are paying 0.22 percent ad valorem user fees and have every right to expect expeditious processing of cargo imports. Overseas air travelers are charged a $5 inspection fee and are entitled to receive the full benefits of expedited border crossing formalities in return for these fees. Unfortunately, this will not be the case if action is not taken to increase rather than freeze, or even worse, cut the airport inspection staff. Further, Customs user fees, in the same manner as Immigration user fees, should cover all associated costs of Customs inspections including overseas inspectors of air travelers flying to the United States from pre-clearance airports. Finally, Customs user fees should underwrite the costs of space occupied by Customs at U.S. gateway airports. Authorizing legislation is already on the books, and implementing legislation is now needed.

Mr. Chairman, our prepared statement also urges important steps to improve the effectiveness and efficiency of the management of Customs commercial systems and closes by reflecting our support for the development of Customs reform legislation in this regard. To that end, we suggest that an exploratory study be conducted on the best ways to match the operations and funding of U.S. Customs Service commercial activities, both for cargo and travelers, with the demands of the marketplace, taking into consideration how reconfiguration of Customs' assets might otherwise aid in the deficit reduction effort.

Thank you for giving us this timely opportunity to present our views on these matters of enormous importance to the public and private sectors alike. We look forward to continuing to work with you and the dedicated professionals of the Customs Service in jointly seeking continued healthy growth in our Nation's commerce.

[The statement of Mr. Landry follows:]

Statement of James E. Landry
Senior Vice President and General Counsel
Air Transport Association of America
Before the Subcommittee on Trade
Committee on Ways and Means
U. S. House of Representatives
ON THE FY 1988 BUDGET AUTHORIZATION FOR AND MANAGEMENT
OF THE U.S. CUSTOMS SERVICE
May 12, 1987

My name is James E. Landry. I am Senior Vice President and General Counsel for the Air Transport Association of America, which represents most of the scheduled airlines of the United States. Nineteen of our member airlines provide regularly scheduled air service between the United States and more than 80 countries.

We appreciate the opportunity to come before this Subcommittee to discuss the FY 1988 budget authorization for, and your oversight of the operations of the U.S. Customs Service, particularly in view of the Administration's proposed severe cuts in the budget for the Customs Service. Our statement focuses on three principal areas.

I. Customs Inspector Staffing at Airports

The U.S. Customs Service budget proposal for FY 1988 asks for a cutback in Customs Service personnel levels to an estimated 13,169 full-time permanent positions, down from the 15,177 positions estimated for this year. The Administration has requested an appropriation for FY 1988 of $803,090,000 for salaries and expenses. Of that amount, approximately $500 million, which would underwrite commercial operations, would be reimbursed by a special fund in the Treasury created by ad valorem and other user fees collected from the importing community and international travelers.

Section 13031(e)(1) of the law which first established this Customs User Fee Account as a separate account within the general fund of the U.S. Treasury, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), states flatly that "the customs services required to be provided to passengers upon arrival in the United States on scheduled airline flights at customs serviced airports shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers." (Emphasis added.) That provision constitutes a ringing statutory declaration of Congressional intent -- that, in return for the unprecedented (prior to 1986) payment of $5 "user fees" upon arrival in this country, the scheduled airline passengers were going to receive fully adequate customs services whenever they were needed.

Are airline passengers receiving full and adequate Customs services in return for remitted user fees, as mandated by that legislation? In a word, the answer is no! The Customs Service currently provides about 700 Customs inspectors at airports of entry and preclearance airports served by the airlines. At this staffing level, many travelers have experienced unacceptable--hours long--delays. Yet incredibly, despite a clear knowledge of increasing international traffic, the Customs budget calls not for an increase in staffing, but a reduction. In point of fact, as I have said, the Customs Service budget is intended to slash 2000 permanent positions.

One would assume, in view of the clear and unequivocal commitment in COBRA, that none of those cuts would touch airport inspection staffs. But, the OMB's rescission notice to Congress, dated January 5, 1987, talks of the benefits realized from the acquisition of technological equipment and automated devices over the past several years, allowing more selective procedures in both enforcement and inspections activities, and thus justifying OMB's determination that lower priority activities within Customs inspection and enforcement programs should not be fully funded. And, most ominously, we have been unable to get any assurance from the Customs Service that airport inspectors would not be among those cut.

Mr. Chairman, airline passengers began paying $5 fees for Customs services last July, and importers began paying the .22 percent ad valorem fee on merchandise last December, in the good faith belief that Customs staffing and resources would be dedicated at levels adequate to meet the current and future demands of our international passenger and cargo traffic. If that faith is misplaced, then, in fairness, the "user fees" should be eliminated or, at a minimum, substantially reduced. In that regard, the Customs Service itself has consistently testified to the effect that its costs for clearing all international passengers entering this country would be fully covered by a $2 charge on all such passengers.

To reiterate, we ask this Committee to insist that the original commitment be honored and that no diversion of these fees to other Customs activities or other governmental objectives be condoned. As Congress provided in the Consolidated Budget Reconciliation Act (P.L. 99-509) last year, which amended COBRA and introduced the ad valorem fees, "...all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriations Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations." (Sec. 13031(f)(3) of COBRA, as amended.)

The Conference Report on the COBRA amendments accurately termed the Customs User Fee Account a "dedicated account in the General Fund of the Treasury". The FY '88 budget itself pays what we trust is more than lip service to that dedication. It states that "[i]n enforcing the provisions of the Tariff Act of 1930, as amended, the inspection and control activity must: (1) accommodate the growth of persons and cargo entering this country; (2) open new ports of entry and expand service at existing ports to meet the needs of the traveling and importing public . . . ."(Emphasis added.)

The two actions, massive personnel cuts and increased services, are mutually exclusive and unrealistic on their face. More importantly, any cut-back in service is patently unfair to the millions of users--passengers and importers alike--who have been subjected to the user fees with the proclaimed intention of assuring fully adequate Customs services when and where they are needed.

Moreover, that statutory commitment cannot condone even maintenance of the status quo. At least a ten percent increase in inspectors is needed to process today's passenger and cargo traffic at U.S. and preclearance airports, to reduce continuing lengthy delays in the entry of air cargo and the inspection of air travelers. Moreover, a ten percent increase in the number of international air travelers requiring Customs inspection is now being projected for FY 1988, as we rebound from the temporary slump experienced last year. Looking at what we know to be an inspections staff already working beyond its capacity; that ten percent additional work load translates into another ten percent additional staff. Therefore, a 20 percent total increase in Customs inspection staffing--another 140 inspectors--would be the minimum requirement at airports during the next fiscal year.

Lest this Subcommittee think that is overreaching, it should be noted that a companion U.S. inspection agency, the Immigration and Naturalization Service (INS), is now making its plans for the use of dedicated user fee revenues under similar legislation enacted by the Congress last year. Here, a similar $5 "user fee" is resulting in the end of inadequate staffing. Indeed, the INS plans to increase its airport inspector staff by 50%, and there will be no fat in such an increase! INS plans to distribute the new staff among the airports of entry in roughly direct proportion to the traffic flows at the airports, subject, of course, to any exceptional needs at a particular location. We would suggest the same approach for the Customs Service, in order to assure compliance with the 45-minute inspection clearance target established by the Congress when COBRA was enacted.

In any event, it would appear that the improved statutory language dedicating the INS user fee monies is working better than the earlier Customs version. In fairness to those who have to pay both of these fees, the dedication of the Customs fee should be made equally certain.

This could be accomplished through a detailed clarification of the expenses properly paid with user fee revenues. Unfortunately, the piecemeal enactment of the Customs user fee provisions has produced needless ambiguities on the issue of covered expenses -- ambiguities which the Customs Service has interpreted very conservatively. The result, of course, is less service to the paying consumer and more money diverted to other Customs activities.

For example, the original legislation clearly contemplated that user fee revenues were being collected in exchange for the full range of Customs passenger clearance activities. In an effort to be absolutely clear that overtime expenses were covered, they were specifically mentioned as a reimburseable item. Subsequent legislation expanded upon the language dealing with the disposition of the fees and allowed their use for the full range of commercial operations of the Customs Service, but subject to appropriation Acts. As a result, there is continuing ambiguity as to the relationship between "commercial operations" and "overtime expenses." While the former would appear to subsume the latter, their separate status leaves a question.

Further, Customs user fees should be available (and we believe are, even as the legislation is currently drafted) to fully cover the costs of U.S. Customs personnel overseas who inspect air travelers flying to the United States. The INS fee revenues are available for such purposes while Customs has taken the position that somehow these are not commercial operations expenses for their purposes. These so-called "excess costs" at six preclearance locations in Canada, one in Bermuda, and two in the Bahamas should be underwritten by Customs passenger user fees exactly as they are today by Immigration user fees.

Finally, Customs user fees should also cover the costs of space occupied by Customs at U.S. gateway airports. Authorizing legislation is already on the books in this regard (72 Stat. 799, as amended by 75 Stat. 527, 49 U.S.C. 1509(e)). In this instance, as in all of the above situations, clarifying language is needed. We would be pleased to offer our assistance in drafting such language.

As to the level of available funding from user fee revenues, I would be remiss if I did not alert this Committee to some facts learned from the first several months of experience. It is clear that projections of $150 to $170 million in annual revenues from each of these $5 fees are overstated -- because the traffic base is overstated. Our best information indicates that the number of passengers paying these fees, if one uses the traffic during the twelve months ended October 30, 1986, and does not adjust for growth, is roughly 16.4 million per year. That would equate to about $82 million per year flowing into each of the user fee accounts. I should add that such projection errors are due in large part to the simple, incomprehensible fact that there is nowhere in our government one agreed set of figures for the number of international air travelers to and from this country.

Finally, on the subject of the proper disposition of user fee revenues, we would like to bring to the attention of the Committee a bill, H.R. 1926, introduced by Representative Herger on April 2, 1987. This bill to establish the User Charge Accountability Act of 1987 would require that revenues collected by Federal agencies in the form of a user charge be obligated for programs which directly benefit those persons required to pay the user charge. The airlines strongly endorse the provisions of this bill and urge that it be given careful and serious consideration. We are convinced that legislation of this nature offers the only hope of maintaining the public's faith in user fees as a reasonable means of generating public revenue.

Before turning to cargo matters, we also urge this Subcommittee to take necessary steps to remedy two other matters of great concern to our industry, and the millions of consumers who use our services. First, the lack of sufficient inspectors at preclearance and U.S. gateway airports has escalated the need for inspectors to work many hours of overtime. Consequently, inspectors at a number of airports have reached the Congressionally mandated overtime reimbursement cap limitation and are no longer available to perform services on an overtime basis. Therefore, airlines are being denied clearance by Customs, and this is already causing international concern. We have been advised that the Government of Canada has approached the Government of the United States on the problem, but without a resolution of the matter to date.

The obvious long-term solution is to provide additional Customs inspectors by making use of the user fee fund. However, even if funds are authorized and appropriated for additional inspectors, it will be many months before newly trained Customs inspectors can be put on-line. The immediate solution, and one which the airlines endorse, would be to raise the current Customs overtime reimbursement cap limitation to a higher amount. Secondly, we ask that, in light of the storm clouds so clearly placed on the horizon by the FY 1988 Customs budget, a prohibition which Congress prudently included in the FY 1987 Treasury Department Appropriations Act be made permanent. Specifically, Congress last year precluded, through September 30 of this year, any implementation of single eight hour shifts at airports and mandated that all current Customs services be continued. Those directives should be made permanent. Let it never be said to the world that this country is only open from nine to five!

II. Customs Cargo Computerization

Computer processing of air cargo inventory and associated data necessary for Customs entry is being developed by airport authorities at New York and Miami, where automated systems for import and export processing will provide an essential service to the international trade community served by these airports. Independent approaches to cargo automation are also underway at airports serving Baltimore, New Orleans, Dallas and Los Angeles.

The airlines are concerned that the multiple approaches to automation at various gateways will lead to conflicts, duplication of efforts, and added costs. Variations among airport systems will generate problems for the users and the Customs Service. Unlike most other countries, the United States has many gateway airports processing exports and imports and between which, airlines transport in-bond merchandise. Thus, the computer system at each U.S. gateway must be compatible with all others as well as with any national air cargo Customs clearance system which may be developed by the U.S. Customs Service.

There is a need, accordingly, for a common discipline among these systems. The airlines therefore ask that Customs be directed to formulate guidelines which address standards for key trade functions and communications interconnections.

These guidelines are needed to assure a uniform national Customs automated air cargo system, a system which deals adequately with the interaction of local port authorities, forwarders, brokers, shippers and airlines in the processing of exports as well as imports.

The Automated Commercial System is far behind in its implementation schedule. We are concerned because this slippage represents not only a lack of automation resources in Customs, but reflects some basic questions on the soundness of ACS design and functionality. After two years of implementation, the Automated Broker Interface subsystem is not covering one half of the Customs entries. The air manifest system was not implemented as scheduled in 1986. Other subsystems for the management of in-bond cargo, processing informal entries, and merchandise quotas are not fully designed and may lead to a very costly piecemeal implementation characterized by extensive revision, redesign, and reprogramming after testing and initial implementation. Air carriers are being asked to capture data that could more economically be captured at other points in the trade documentation process.

We urge that the Subcommittee request the Commissioner of Customs to engage an independent evaluation team to assess the reasons for delays in ACS and validate the soundness of the overall systems design as well as interrelationships between subsystems. Such an evaluation should also recommend any changes in legislative authority necessary to operate Customs cargo functions in an electronic data interchange environment. The high volume of shipments via air express and air freight services demand a dynamic customs clearance system which is not within our reach in 1987 although other countries have already succeeded in operating such computer control systems.

The Vessel Manifest Statute of 1799 appears to be governing Customs information requirements in the 1980's. When first drafted, the customs law spelled out the details of "manifesting kegs and hogsheads." Today, electronic computers and advanced telecommunications computers should be permitted to streamline the import/export documentation system without outdated restrictions. We request that your Committee look into the design concepts, implementation, planning and staffing for the various subsystems of the ACS and identify any revision to legislation which may be needed to facilitate the adoption of new automated systems in this vital area of trade facilitation.

III. U.S.-Canada Customs Travelers Clearance Process

In order to provide inspection efficiencies and, over a period of time, substantially reduce the number of Customs inspectors along the U.S.-Canadian border, the airlines recommend implementation of a joint Customs travelers clearance process. In view of the similarity of United States and Canadian Customs missions, problems, needs and requirements, such a joint travelers clearance process appears ripe for consideration by this Committee.

Under such a plan, travelers to and from Canada and the United States could freely travel across the common border, under most circumstances, without Customs formalities. The plan would allow goods accompanying travelers crossing the U.S.-Canada border to be, within reason, duty exempt.

In this regard, at the U.S.-Canada Joint Government/Airline Facilitation Conference sponsored by the Air Transport Association in Hawaii last December, the following conclusion was adopted:

> The Conference concluded increased cooperative efforts should be undertaken to facilitate the movement of travelers and the flow of goods across the Canada-U.S. border, and noted U.S. Customs support in this regard for a joint U.S.-Canada travelers clearance process.

Implementation of a U.S.-Canada Customs travelers clearance process for trans-border travel would greatly reduce the need for Customs inspectors for the processing of travelers along the common border and at airports for trans-border air travel. As noted above, the Customs Service is supportive of a joint U.S.-Canada travelers clearance process, as is reflected in the attached March 26, 1986 letter to ATA from the Commissioner of Customs.

Conclusion

In summary, we are alarmed by the drastic cuts proposed in the Customs budget and, most particulary, personnel cuts in the face of continuing increases in international air passengers and air freight. Importers are paying .22 percent ad valorem user fees and have every right to expect expeditious processing of cargo imports. Overseas air travelers are charged a $5 inspection fee and are entitled to receive the full benefits of expedited border crossing formalities in return for these fees. Unfortunately, this will not be the case if action is not taken to increase, rather than freeze or --even worse -- cut the airport inspection staff. Further, Customs user fees, in the same manner as Immigration user fees, should cover all associated costs of Customs inspections including overseas inspectors of air travelers flying to the United States from preclearance airports. Finally, Customs user fees should underwrite the costs of space occupied by Customs at U.S. gateway airports. Authorizing legislation is already on the books, and implementation legislation by this committee is now needed.

In the past year, Customs has refused to schedule the clearance of air travelers on some flights at some airports because of overtime costs. Experience to date under the Customs user fee program gives no indication that the funds will be made available to provide requisite processing capabilities in a timely and efficient manner. We ask this Subcommittee to take all necessary steps to assure that the looming breach of faith does not become a reality. In the short-term, this entails raising the current Customs overtime cap limitation to a higher amount. In the longer term, it means expending user fee revenues to hire and train additional Customs inspectors, as the law intends.

In addition, Customs must streamline its inspection operations and otherwise improve the efficiency of the management of its commercial systems. The establishment of Customs cargo computerization guidelines and implementation of a U.S.-Canada travelers clearance process will accomplish this by facilitating passenger and cargo inspection processing, and will also reduce costs to the Government.

The airlines support the development of Customs reform legislation for a more effective and more efficient management of commercial operations which we hope will be undertaken by this Subcommittee. The previously mentioned U.S.-Canada facilitation conference adopted the following position in this regard:

> The Conference concluded that an exploratory study should be conducted on the best ways to match the operations and funding of U.S. Customs Service commercial activities, both for cargo and travelers, with the demands of the marketplace, taking into consideration how a reconfiguration of Customs' assets might otherwise aid in the deficit reduction effort.

Attached in this regard is a brief paper which explains the goals of such a proposed study. We trust that you will give this suggestion your serious consideration.

Thank you, Mr. Chairman, for giving us this timely opportunity to present our views on these matters of enormous importance to the public and private sectors alike. We look forward to continuing to work with you in jointly seeking continued healthy growth in our nation's commerce.

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

March 26, 1986 INO-1-01-IN:IP:G:AM BP

Dear Mr. Landry:

I am pleased to receive your proposal relative to a joint U.S.-Canada travelers clearance process. It represents a major step toward reducing trade barriers between Canada and the United States, an important goal of the U.S. Customs Service and a concept which closely parallels our desire to reduce Canadian border processing activities.

As you are aware, trade between Canada and the United States constitutes the largest trading relationship in the world. During the March 1985 meeting between President Reagan and Prime Minister Mulroney, a commitment was made to improve the level of trade through increased cooperative efforts to expedite the flow of goods across the border. Following the spirit of this commitment, U.S. and Canada Customs agreed to construct and operate common border facilities at Danville, Washington/Carson, British Columbia, and Noyan, Quebec/Alburg, Vermont. We anticipate the facilities will be in operation by fall 1987, at which time we will evaluate the results of this pilot effort. I believe that the establishment of common border facilities is a first step in simplifying border processing for both nations.

Additionally, we are exploring other ways in which border commerce and transportation can be expedited. However, as you so correctly pointed out, the reduction or elimination of border processing activities would greatly impact both Canadian and U.S. Federal agencies. While I realize there are many legal and technical issues which would require resolution, I will continue to pursue major revisions to border processing procedures in order to expedite the flow of passengers and trade between Canada and the United States.

I would be pleased to keep you advised of U.S. and Canadian Customs mutual efforts relative to border facilitation.

Yours faithfully,

James E. Landry, Esq.
Senior Vice President
  and General Counsel
Air Transport Association of America
1709 New York Avenue, NW.
Washington, D.C. 20006

Proposal For A Study Of Alternatives To Current Customs Commercial Services Funding

As the events of the past year have demonstrated, tightening budgetary constraints are antithetical to the free flow of commerce -- passengers and cargo -- across the borders of the United States. While conflicting demands and priorities for Customs Service resources are not unique to the deficit reduction era, they have been, unfortunately, brought into sharper focus in the recent past. Single shift Customs services, new and expanding "user fees," inadequate staffing and lengthy clearance delays have all been threatened or have come to pass as a means of coping with unrealisticly low budget outlays.

This set of circumstances is obviously of great concern to the transportation industry, the traveling and shipping public and the Customs Service. The chronic, structural inability of the Customs Service to match resources with marketplace pressures has produced a cargo and passenger clearance system in a constant state of disarray. Worse still is the very real threat that the situation will deteriorate further as budgets are further constrained.

In an unfortunate irony, the sharpist 'pinch' of these constraints has been felt in the area of Customs activity where it is least understandable -- the commercial sector which produces tremendous revenues and which, in reality, pays for the services which it requires. More unfortunate still is the potential this situation holds for choking off the very revenue flow upon which the government must depend to help facilitate budgetary equilibrium.

It is axiomatic that, in an area where government interface with commercial activities determines the rate at which those activities can be conducted, [redacted] a constraint on government resources not synchronous with market pressures will serve to constrain the market's growth. It is for this reason that the Congress has, in the past, turned to innovative financing and operating conditions for governmental entities tasked with carrying out public policy in the commercial area. When a government entity must exist in a commercial environment, it stands to reason that the program's operational characteristics must be consistent with that environment.

It is in this context that a suggestion has been made for an exploratory study of how best to match the operations and funding of Customs Service commercial activities with the demands of the marketplace. Such a study may also afford the opportunity to consider how a reconfiguration of Customs' assets might otherwise aid in the deficit reduction effort and at the same time assure maximum effectiveness of the overall Customs mission.

Such a study, to be conducted by a task force of transportation industry, cargo, shipping, port authorities, importers, exporters, travel association and government officials, among others, would focus on alternative approaches to funding Customs commercial activities along with other personnel and resource management issues. The goal of such a study would be the production of a realistic legislative program -- one which both industry and the Executive branch could support -- to improve the ability of the Customs Service to meet its commercial responsibilities while simultaneously enhancing the overall capability of Customs to perform its remaining non-commercial functions.

Chairman **Gibbons**. Thank you, sir.

Now, the Airport Operators Council International.

STATEMENT OF RICHARD H. JUDY, SECRETARY-TREASURER, AIRPORT OPERATORS COUNCIL INTERNATIONAL, AND DIRECTOR OF AVIATION, MIAMI INTERNATIONAL AIRPORT

Mr. **Judy**. Good afternoon, Mr. Chairman. My name is Mr. Judy. I am director of Miami International Airport, and I am speaking here today on behalf of AOCI.

We have submitted a more extensive written statement.

Chairman **Gibbons**. It will all be part of the record, Mr. Judy.

Mr. **Judy**. Thank you.

We have some good news and I guess some bad news possibilities this year. The good news is that foreign visitors to the United States will probably be up around 25 percent, creating huge additional revenues and jobs for our travel and tourist industry, and a big plus in the balance of trade. The bad news, of course, is that the Federal inspection service staff may not be able to handle the volume of arriving international passengers—leaving, of course, these valuable visitors with an extremely poor and unfortunate lasting first impression of the United States and our citizens, a damning impression of Customs, Congress, and those of us responsible for the airport infrastructure and its services.

Now, for a civilized nation, our current Federal inspection procedures and other services provided to arriving international passengers—be they U.S. citizens or foreign visitors—and our cargo is somewhat embarrassing. And as I said, this embarrassment is the responsibility of all of us.

We just do not have the will to get control of U.S. Customs. It is the largest dictatorship in the world. We do not want to control it. It just goes on its merry way and does what it wants. Someday Congress is going to look at that operation, and they are going to say enough is enough and start to put some procedures and systems in here to serve our Nation, our cargo industry, our productive processes of this country.

Here we are trying to balance budgets. The American people are trying to make a living, trying to maximize their talents, multiply them, whatever you want, and go on and enjoy the fruits of their labors. Customs does not care about these processes. I have lived through the 6-hour lines, people fainting. There is no excuse for this Nation to have such a system as this.

Obviously, we have filed a statement. I do not want to waste your time. I can say to you that the ATA statement was brilliantly prepared. I have been in this game for 20 years. Customs knows it. That is why they do not want me on any user committee. They know that Miami International Airport has advanced practically every practical system. I can remember the days in 1970 when I mentioned to Customs to use statistical sampling, to introduce all forms of computer methods of clearing people, and I would get letters from Washington saying I must be out of my mind. Now, statistical sampling is in place in all these procedures.

We pushed for the red and green civilized system that is used throughout the western world; in this country it is not implemented. It is never implemented. Yet they use it in London; as I say, all the civilized nations of the world use it except the United States. There is some unique reason why we cannot, we have not been able to figure it out.

In any event, we must point out to you that we are going to have a mess this summer in all of our Customs facilities. I know it is not the subject here, but the amnesty situation, as you may know, is a huge drain of immigration inspectors moving from the airport systems into the jobs that are available in the amnesty program. They are draining many, many inspectors from the airport immigration sections. I can tell you the personnel system is not going to move fast enough. They are already moving people from Miami—and we are desperately short—over to Los Angeles to cover for Los Angeles. And they are draining them out of Los Angeles, and the personnel system is not going to respond in time to fill vacant positions.

I can urge you in terms of Customs to extend the overtime, at least for nine months, but put a deadline on it. Make sure it expires or that will be used for years to come. It is going to be needed, or we are going to have a disaster.

As I point out in my opening statement, for God's sake, the international tourism is a very, very valuable export. It is the largest productive business in the world, tourism. That is one thing we can get a piece of in terms of trying to balance our trade. We have got to serve it, though.

When we talk about the cargo, keep in mind when we talk about inspectors of cargo it is not only imports coming in. There is a lot of cargo going out. There are a huge number of inspection processes that are involved in this now. So we need inspectors for both.

To move on as fast as I can, I think that we in Miami are looking at some programs to use x ray systems for cargo. We think it has a lot of potential, and we would urge this committee for some way to urge a prototype test of x ray cargo systems. I think we can get a handle on a lot of the drugs coming in if we really push this technology instead of flying airplanes all over the place. There are a lot more answers.

We are working on it, trying to put the systems in. Customs pretends to work for it, but there is no process moving forward. I think we ought to put it in one or two airports, and we could get at some of the problems using x ray technology.

Some other areas that I think are important are that we should have one fund for all user fees, we should have one standard. I think this is one way of getting at all these inspection agencies. At least take all the inspection fees and get them in one fund. Out of that get a standard. One of the standards that is critical in the aviation inspection process of clearing people is to say you have got 45 minutes to move people through this process, 45 minutes. If Congress establishes that standard—and I can assure you it is one that is accepted by Customs, recognized by the Commissioners as a reasonable standard. If we put that into law and say you have 45 minutes to move them, it would be something for us to report around. It would be something for you to get reports on. How did you do? So we have some measuring systems on how that money is being spent and that we are getting the progress.

And I do not mean average 45 minutes. I mean when that airplane lands that the latest any one passenger can go through the system is 45 minutes. We urge that you consider that.

Let me say one fee, one fund, and one standard because we are proliferating fees. We are looking at a travel fee; we are looking at a $2 fee for agriculture. It is getting horrendous, and the fees are not dedicated. The Customs fee is not dedicated. The immigration fee is. We think that is right. But I think one fee, one standard, and one fund, and get those standards in. Congress would start to measure what is going on in the commercial area. I do not think there is any other answer.

I think that I have spoken enough, Mr. Chairman. I appreciate the opportunity.

[The statement of Mr. Judy follows:]

TESTIMONY OF RICHARD H. JUDY, DIRECTOR OF AVIATION, MIAMI INTERNATIONAL AIRPORT, ON BEHALF OF THE AIRPORT OPERATORS COUNCIL INTERNATIONAL (AOCI) BEFORE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE ON FY 1988 CUSTOMS SERVICE AUTHORIZATION AND OVERSIGHT

Mr. Chairman and Members of the Subcommittee:

I am Richard H. Judy, Director of Aviation for Miami International Airport and Secretary-Treasurer of the Airport Operators Council International (AOCI). On behalf of AOCI's U.S. members, particularly the major international airports which this year will receive more than 27 million international passengers, we appreciate this opportunity to express our views regarding fiscal year 1988 authorization of the U.S. Customs Service.

The Airport Operators Council International (AOCI) is the association of governmental bodies that own and operate the principal airports served by scheduled airlines in the United States and around the world. AOCI member airports enplane more than 90% of total domestic and virtually all U.S. international scheduled passenger and cargo traffic. Worldwide, our international member airports enplane two-thirds of all airline passengers and cargo on six continents.

We are here today to ask that Congress provide the necessary resources to increase the Custom Services' inspection capabilities, and to improve inspection procedures for greater efficiency in clearing international arriving passengers and cargo.

In particular, we request increased funding authorizations in FY 1988 to:

1. Provide additional Customs inspectors to clear passengers and cargo expeditiously.
2. Permit broader implementation of a true "red/green" passenger clearance system at U.S. international airports, to improve present out-dated passenger inspection procedures and to reduce processing delays.
3. Accelerate completion of Customs' Automated Commercial System (ACS) to streamline and improve cargo processing.
4. Enable Customs to conduct a one-year test of X-ray scanning devices for interdicting contraband in both import and export containerized cargo.
5. Assure that Customs User Fee funds are dedicated and fully appropriated for Customs staffing and inspection functions.

Why are these actions so important? Taking a step back from the core issues, the importance of efficient federal inspection is obvious. The United States is now competing in what amounts to an international trade war, to attract foreign business and foreign visitors. Foreign visitors' purchases of goods and services in the U.S. are an important source of foreign exchange. The Air Transport Association estimates the size of the travel and tourism industry to be about $250 billion. The travel and tourism industry is also labor-intensive. It has great potential for growth and it directly affects the health of our balance of trade and our budget deficit. Yet federal regulations and procedures are the most serious impediments to the growth of this vital industry.

The federal inspection process is the first thing a foreign visitor encounters upon arrival in the United States. Upon arrival, many of those foreign visitors endure an inefficient, outdated, lengthy and often unpleasant federal inspection process, which then sours impressions of their entire stay in the U.S. and also colors the opinion of the U.S. that they express to others in their own country. That foreign visitor's first impression is tremendously important to our travel and tourism industry, and to the jobs of many Americans. Returning U.S. citizens and residents often view the federal inspection process as a necessary but burdensome period, seemingly designed to test their patience after a long and wearying international flight

Our present inspection system discourages tourism and discourages trade, contrary to our national interests and despite a considerable amount of promotional work. If we can remove the impediments, our travel and tourism industry will grow, our foreign trade will grow, employment will grow, and our country's economic health will improve.

To efficiently handle the projected growth in traffic using present Customs procedures will require a substantial increase in funding and manpower. Customs must be encouraged to streamline significantly its existing procedures, by instituting a means for bypassing those passengers who need little or no screening, by automating its cargo clearance system, and by more efficiently inspecting the small percentage of passengers and cargo that do need inspection.

Delays in clearing international passengers and cargo are costly to everyone -- the traveller, the shipper, the airport and the airlines, and to the economy as a whole. Passengers waiting for clearance and missing connections are wasting potentially productive time. Airlines must re-ticket passengers who miss connections, or reimburse their expenses for meals and lodging, or delay numerous connecting flights and waste the productive capability of multi-million-dollar aircraft. Cargo clearance delays render time-sensitive cargoes, such as perishable fresh produce or flowers, newspapers, courier packages, medical supplies and "just-in-time" inventory items, either worthless or severely reduced in value. The costs are reflected in higher airline ticket prices, higher cargo shipping rates, and foregone economic benefits for everyone.

How many times have we heard travellers say that they will do anything to avoid one or another airport, because of the delays? Often, certainly, and the same applies to cargo shippers.

The root cause of these very common passenger and cargo clearance delays in the federal inspection process is the combination of inefficient, ineffective and out-of-date inspection procedures, and inadequate federal funding for the passenger and cargo inspection activities of the Customs, Immigration, Agriculture and Public Health Services.

CUSTOMS PROCEDURES AND STAFFING

Today airports have no direct influence on the procedures used by the federal inspection agencies. They cannot assure that adequate inspection manpower will be available to avoid processing delays for passengers or cargo. The two vital factors in the inspection process (procedures and staffing) are governed by federal decisions, largely shaped by outdated federal regulations and constant budgetary constraints, which bear little relationship to aviation needs or requirements, locally or nationally. Yet, the airport operator has to provide, at its own cost, all of the space and facilities in which the federal inspection services screen international arriving passengers, their baggage, and air cargo, as well as all of the associated costs of operation, maintenance and utilities for those facilities. Consequently, we pay for expensive facilities and services over which we have no control.

AOCI has long advocated that the Federal Inspection Services (F.I.S.) (Customs, Immigration, Agriculture and Public Health), in close cooperation with U.S. international airlines and the operators of international airports, should adopt all practical measures to facilitate international air travel, and prevent unnecessary delays to aircraft, passengers, baggage and cargo. While Federal regulations must be enforced, they should be carried out in a manner that imposes the least possible inconvenience on air travellers and the movement of cargo.

CUSTOMS' FY'88 BUDGET AND STAFFING

Last year, with only 700 full-time equivalent inspector positions assigned to U.S. international airports, Customs handled 25 million arriving international passengers and a huge volume of international air cargo. It is no wonder that such a limited number of Customs inspectors cannot process multiple plane-loads of arriving passengers and cargo in a timely fashion.

AOCI is greatly concerned that the Administration's budget for fiscal year 1988 will compound the already unacceptable delays in federal inspection processing. The Administration has proposed reducing Customs personnel from the current 15,177 full-time permanent positions to 13,169. We do not know how this 2,000-position reduction would affect current staffing at U.S.

international airports, but we are alarmed that such cuts would be proposed at a time when traffic projections indicate that 29 million international arriving passengers will use our airports in fiscal 1988, a 16% increase over last year.

The present level of staffing is grossly inadequate to clear all international arriving passengers through all federal inspection services within 45 minutes of their arrival in the United States. This standard, of clearing all passengers within 45 minutes, is not an arbitrary figure. Forty-five minutes represents the maximum amount of time that passengers have to clear federal inspection, if the passenger's aircraft-to-aircraft connecting patterns are to be efficient and meet the international standard of 1-1/2 hours.

PROCEDURAL IMPROVEMENTS

Besides the need for staffing increases, federal inspection agencies are long overdue in instituting several badly-needed procedural improvements.

For example, a true "red/green" passenger clearance system, along the lines of those already in use successfully in most European countries, needs to be applied in the United States. This would solve the problems associated with outdated and inappropriate inspection procedures currently followed.

Customs should use statistical sampling to identify both passengers and cargo to be inspected. As Members of Congress, you are well aware of the power of statistical sampling and its many applications in our society. Quite apart from opinion polls, billions of dollars are committed every day solely on the basis of statistical sampling in market research studies. Customs should make the most of this powerful tool, and perhaps the conflict that Customs maintains is inherent between enforcement and facilitation will then disappear.

Facilities and staffing to clear international arrivals by corporate and general aviation aircraft at major reliever airports are also needed, so that aircraft operation pressures at major international airports can be reduced. Both corporate and general aviation aircraft are important to our international competitiveness, and they deserve adequate service as well.

Only when we have a true red/green system, a 45 minutes-or-less clearance standard, and the ability to clear corporate and general aviation at major reliever airports, will we be satisfied that U.S. citizens and foreign visitors alike are really being served by the federal inspection process. Only then will we have confidence that we are satisfactorily protecting our borders, while also promoting America for the welcoming country which it really is.

CUSTOMS USER FEES

We are also perplexed as to why the Administration is proposing staffing cutbacks now. The new Customs User Fees, recently authorized by Congress, will raise more funds than are needed to cover the costs of the current level of Customs staffing. These user fee monies will finally provide the source of funds to substantially increase present staffing levels, and therefore the quality of service provided.

We are heartened to see that concerned members of the Senate Finance Committee, in the FY'88 Customs authorization bill (S. 829), have made clear Congress' intent that all Customs User Fee proceeds must be deposited in the same dedicated trust fund account, and shall be treated not as federal "revenues" but as "off-setting receipts" to be spent entirely on Customs inspection functions. This action is vitally important to assure that federal inspection improvements are realized and that those paying the new user fees will benefit from those fees. We urge this Subcommittee to similarly clarify congressional intent with respect to the disposition of Customs user fees.

If we accept the principle that user fees monies should be spent on the commercial, and inspection and control activities of Customs, it quickly becomes apparent that those funds should be applied to inspection staffing, inspection areas, facility operating costs, improved procedures which reduce inspection time, automated cargo clearance computers, and other costs incurred to facilitate the clearance of travellers and goods. The international traveller and shipper is paying for and should receive adequate service. That service is not being provided today.

Airports are bearing an enormous share of the cost of facilitation. As an example, Miami International Airport has already made capital investments of more than $58 million in passenger inspection facilities, with a further $42 million in facilities under design and construction. The Miami airport has also invested more than $15 million in cargo inspection facilitation, including more than $10 million in the first computerized cargo-clearance system in the U.S., linked directly to the central Customs computer in Franconia, Va. Operational staff support and maintenance of these facilities costs the airport more than $6 million annually, with an additional $2 million a year in operating costs for the new cargo-clearance computer system.

In New York, the Port Authority of New York and New Jersey has made capital investments of approximately $23 million in passenger F.I.S. facilities at Kennedy Airport's International Arrivals Building (I.A.B.) alone, with an additional $13 million in improvements under construction, while operations and maintenance expenses approximate $8 million annually. Port Authority plans for a complete reconstruction of Kennedy airport's federal inspection areas within the next decade will require expenditures far exceeding what already has been spent.

Airport operators should be entitled to reimbursement for some of these costs. Certainly, any surplus user fees available after the funding of the inspection activities of Customs should go to reimburse airports before funding Customs enforcement activities, which do not affect the average traveller or shipper who pays the user fees.

We oppose any proliferation of user fees unless the Office of Management and Budget can guarantee that the revenues will be applied to the inspection activities of Customs and the facilitation activities of other federal inspection services. Second, it is gratuitously complicated for shippers and travellers to pay, and airlines to collect multiple user fees when federal inspection is really one process. No one, upon arriving in an international airport, pays attention to whether he is spending forty minutes in Immigration and twenty minutes in Customs, or vice versa. His concern is that it took him an hour to clear through the whole process--and he missed his connecting flight!

Therefore, we urge that only one user fee be collected (and certainly no more than the two we already have) and kept in one trust fund, so that those funds can be applied to those projects or services most needed to provide one continuous, efficient facilitation process. There needs to be one smooth, total system, whether the specific inspection elements are performed by Customs, Immigration or Agriculture.

Mr. Chairman, we ask that Congress exert its oversight power to ensure that the integrity of the user-fee system is maintained. There must be full and clear accountability for the collection, administration and expenditure of user fees to ensure that they are devoted to the purpose for which they were authorized, and are not misused to become simply another government taxing mechanism. Even before the $5 per head Customs and Immigration user fees and the 0.22% cargo fee, international air travellers and shippers have been paying for federal inspection facilities. Each international passenger pays a $3 departure tax which accumulates in the Airport and Airway Trust Fund and, along with other aviation user taxes, helps pay for the improvement of our airports and airways. If I seem to belabor this point, it is because in the only other experience airports and passengers have with user fees -- the Airport and Airways Trust Fund -- those funds have been allowed to grow into exhorbitant surpluses and have not been fully used for the purposes originally intended. Please, do not let that abuse of user fee funds be repeated with F.I.S. user fees.

Airport operators and airlines for many years have had to make excuses to the public they serve for inadequate international arriving passenger and cargo processing service. Now that user fees are being collected to pay for these services, there is no excuse for anyone, including the federal government, to hide behind.

CUSTOMS CARGO COMPUTERIZATION

As I noted, several airport authorities are now developing large, complex and expensive computer systems for the automated processing of air cargo. Miami and New York are the first examples of major U.S. international airports whose large cargo-computer systems will be in full operation during the next twelve months. Development of computerized cargo systems is also being investigated at other airports--in Atlanta, Baltimore, Dallas, Houston and Los Angeles. Computerized cargo processing is designed to streamline customs import and export procedures, eliminate redundant paperwork, and greatly expedite the inspection and clearance of air cargo. Such systems are already being used successfully at most major European and Asian airports.

In the United States, though, these large cargo-clearance computer systems must have some commonality, in order to ensure standard interfaces between all of the users of the systems (the airlines, brokers, forwarders and federal inspection agencies). We are concerned that the independent development of various U.S. airport systems could be costly and result in duplication of efforts.

The AOCI Board of Directors has therefore directed a study of automated clearance systems. We will be happy to share our progress with you, once our airport coordination program is in place. AOCI is also represented on the international Airport Associations Coordinating Council (AACC)/International Air Transport Association (IATA) Automated Cargo Processing Committee. This AACC/IATA committee has been working for the past two years to coordinate the development and standardization, on a worldwide basis, of major international airport Computerized Cargo Clearance Systems. We will also keep the Congress updated on our work with respect to this worldwide coordination.

These new cargo-clearance computer programs represent enormous investments by the major airports (more than $20 million for each of the first two systems at Miami and New York, over a four-year development and operational period). These complex and expensive systems will, however, only bring the projected benefits to U.S. Customs, airports, airlines and the U.S. international trade community if the complete U.S. Customs Automated Commercial System (ACS) is ready to exchange electronic data with the airport cargo clearance computers. We ask that Congress direct the Administration to provide Customs with the necessary budget to enable it to complete both the automated manifest and the in-bond components of the ACS within the next twelve months.

The Customs ACS program is the primary means of achieving future manpower savings in Customs. It is also the principal catalyst for movement toward "paperless-entry" of general-release cargo, and the first sensible step toward statistical sampling for cargo inspection purposes. The ACS program is also the basis for future major improvements in the level of Customs Service (e.g., 24-hour, 7 days-a-week service; electronic interface with airlines and airports; interface with the international trade community using the new

Harmonized Customs Codes and Harmonized International Trade Documents, etc.) Successful completion of the Customs ACS program could help revolutionize U.S. international trade, and greatly improve the cost-benefit programs of the U.S. Customs Service.

Mr. Chairman, we seek your help in ensuring that the necessary funds to expedite the completion of ACS are provided, and that the Customs Service itself also then changes many of its older regulations, to reflect a modern "paperless" electronic data interchange environment. Customs could initiate electronic data interchange immediately, by approving pilot programs in coordination with cooperating automated airlines and automated airports. The manpower savings that could be achieved are enormous, if the processing of cargo were automated and "paperless". Automation would allow those many Customs officers presently tied to their desks handling paper to be freed instead to perform the cargo inspection activities which require trained individual judgment.

X-RAY CARGO SCANNING SYSTEMS

Customs should also be directed to press forward with a twelve-month operational test of the new X-ray cargo scanning systems. Two of these systems now show great promise in the detection of contraband (drugs, etc.) hidden within containerized and palletized cargo, (which now represents approximately 80 percent of all international air cargo). A twelve-month operational test of both systems in a live environment is now needed. These new X-ray devices also show great promise for better export security control, in their ability to detect "high-tech" computers and weapons in containerized or palletized export cargo. Automated cargo clearance, using the ACS, in conjunction with the airport cargo clearance computers at ports of entry, and the new cargo X-ray scanning devices, can and should work together to achieve the ultimate goals of interdicting narcotics as well as other contraband, and facilitating air cargo movement.

CONCLUSION

In conclusion, Mr. Chairman, international passenger and cargo traffic at our major airports continue to show sustained growth. Our airports are working hard to provide for this growth by investing in large new facilities for the Federal Inspection agencies, and in complex cargo computers. International air travellers and the international trade community are now paying hundreds of millions of dollars annually to fund the federal inspection services. Airports, passengers and the international trade community should now be entitled to receive the benefits from these major investments.

The Customs Service budget for the forthcoming year should be substantially increased in three specific areas: 1) more inspectors to clear passengers and cargo efficiently, 2) the completion of the ACS program to clear air cargo more efficiently, and 3) a one-year test of X-ray scanning devices to interdict contraband in both import and export containerized and palletized cargo. In addition, Customs should be directed to develop and test new and more efficient inspection procedures for both passengers and cargo, using such methods as statistical sampling.

We strongly urge this Subcommittee to increase the fiscal year 1988 authorizations for the U.S. Customs Service and provide the necessary direction to achieve these objectives.

While our remarks may appear somewhat critical, let me assure you, Mr. Chairman, that AOCI members have had many dealings with Commissioner Von Raab and his management team, and we are all impressed by their knowledge, skills and concerns for the traveller and shipper. In our view, Commissioner Von Raab is extremely capable and has brought outstanding leadership to Customs. He is, however, faced with the constraints that 200 years of Customs tradition have placed upon him.

Congress should encourage and support his continuing efforts to break the bonds that have historically constrained Customs thinking and actions, by making it clear that Congress also believes "the way Customs did it yesterday and does it today" cannot be the way Customs will do it tomorrow.

Mr. Chairman, this concludes our prepared testimony. I will be glad to answer any questions the Subcommittee may have.

Chairman **Gibbons**. Thank you, Mr. Judy. I have been through your airport, and I know you do the best you can, but it just takes a lot of people to process all of that. And as long as OMB sits over there in their "ivory tower" and plays games with it, and cuts 2,000 out.

It is hard to get 2,000 more positions back in the OMB budget, I want to tell you. It requires an excessive amount of my time just to do that every year.

Mr. **Judy**. I know. I watch you do it every year.

Chairman **Gibbons**. And if we do not do that, we are going to really be in bad shape. So your criticisms are well-taken.

Mr. **Judy**. There are good people in Customs. I work with them. We are putting in some extensive electronic cargo clearance systems. You have got some really talented, dedicated people, and you know that we know that, we are responsible. I feel I am more responsible as a citizen by speaking out.

Chairman **Gibbons**. Well, I appreciate your speaking out.

Mr. **Landry**. I would echo that, Mr. Chairman, there are good people there, but that 45-minute target for passenger clearance is just going to be a dream if this——

Mr. **Judy**. You do not know what you would do. Just believe that. It is one of the most significant things you could do. All you need to do is put a process in place where our citizens can respond to it and you will see a lot of changes. You put 45 minutes through the inspection process, and it will be the most refreshing thing that is done. That is the only way you can get at it.

I mean, there is a lot of other approaches to it, talk red and green, and—yes—but put a standard in and let them work to it.

Chairman **Gibbons**. All right. Fine. We will see if we cannot adopt your suggestion.

Next is a panel from the American Textile Apparel Coalition and from the Iron & Steel Institute.

Gentlemen, I am going to give the textile and fiber people 10 minutes, and the iron and steel people 10 minutes, and then I have to go to the Rules Committee because the Government will cease functioning if we do not get a rule to borrow a few trillion more dollars.

STATEMENT OF ROBERT E. BLANCHARD, PRESIDENT, NATIONAL KNITWEAR MANUFACTURERS ASSOCIATION, ON BEHALF OF THE AMERICAN FIBER, TEXTILE, APPAREL COALITION [AFTAC]

Mr. **Blanchard**. Mr. Chairman, maybe I can start it off, and we will make it very brief, as our statement is very brief.

My name is Bob Blanchard. I am president of the National Knitwear Manufacturers Association and chairman of the Customs Subcommittee of the American Fiber, Textile, Apparel Coalition, [AFTAC] and we are comprised of about 21 organizations representing industries and labor unions involved in the textile-apparel industry in this country.

With me is Charles V. Bremer, director of international trade division of the American Textile Manufacturers Institute. He is going to make his own statement, and submit a brief statement also, sir.

Chairman **Gibbons**. All right, sir.

Mr. **Blanchard**. We are here representing AFTAC and are most appreciative of the opportunity to be with you. As with everybody else today, I think you will find that our comments are directed at the Customs Service Bureau, and the commercial services aspect of this Bureau.

We are deeply concerned about the ability of the Customs Service to properly fulfill its overall mission, and they have many elements of their mission. We understand the balancing of it is difficult, but we certainly feel that they should be doing a better job in many different areas.

As you readily know we are impacted very heavily by imports. I am not going to go into all of these details, but the Customs Service is a very integral part in trying to control these imports, and with the bilateral agreements, and everything else that we have in effect.

We are concerned that the Customs Service is losing a lot of its fine people, as was discussed here earlier. They are very discouraged.

Let us make brief comments on some recommendations that we may make for customs, and then I think that this will serve our purpose. You have already heard a lot.

I think the biggest thing that we have found, and we have had a lot of contact with Customs Service people throughout the last few years—is physical inspection by qualified people, with adequate administrative services. Inspection is the key to having good enforcement. We have heard said that an additional 2,000 jobs above the numbers they presently have is necessary to that inspection process.

Mr. Lane said earlier that 2.5 percent of cargoes were inspected. I have heard a lot of different figures on this. I have heard from the GAO reports that it is down to one-half of 1 percent, and probably falling.

Anybody that is in this business that wants to get illegal products into this country has pretty good odds that they are going to get it through without detection if they have one-half of 1 percent inspection. They can then plead ignorance on the other half percent, and probably get along pretty well.

We also think that for our particular industry—and I am sure there are other industries involved here, too—overseas more inspectors should be readily available to do work in countries where we understand that there is a lot of diversion and fraudulent goods.

We have to get more people over there, and I think the Customs Services' people understand that also. We would like to have you push for that.

I think Commissioner von Raab and others realize this need. It has been a matter of budgetary restraints from what we hear.

For consideration we present the concept of helping Customs by potentially limiting imports to certain ports of entries. This has been discussed, I am sure, with a lot of different groups.

We just made a quick run on four major categories to determine where entries were made in one fiber, one fabric, an apparel, and then a mixed category.

We found that in 1986, on these four major categories, 88 percent of the goods came through a dozen ports. Now I think we should look at this. I do not know whether it is the answer, but I think it is something that can be looked at where we might be able to get better service and better use the qualified people we have. We would like to put that concept up for consideration.

We have talked to the Customs people about this. I think Commissioner von Raab feels he can do it himself, if he wished to do it.

Politically this concept has some problems. I do not think we are going to be changing too many people around since 88 percent are already coming in through 12 ports.

All of us have heard it and we live with it, but the timeliness of the data, and the reliability of the data which we get out of Customs, and then through Census, is atrocious. Our negotiators, Mr. Smith and his group from USTR cannot rely on it either. Trade data must be improved.

I think these four items are something that this Subcommittee should seriously consider, and we would like to present them to you. We will be writing you later with more detailed information on these recommendations.

[The statement of Mr. Blanchard follows:]

Statement of
Robert E. Blanchard
President
National Knitwear Manufactuers Association

Mr. Chairman:

My name is Robert Blanchard. I am President of the National Knitwear Manufacturers Association, and Chairman of the Customs Subcommittee of the American Fiber/Textile/Apparel Coalition (AFTAC) which is comprised of some 21 organizations representing industries and labor unions involved in the production of textile fibers, fabrics, apparel, and other textile products in the United States. With me is Charles V. Bremer, Director, International Trade Division, the American Textile Manufacturers Institute. We are here representing AFTAC and are most appreciative of the opportunity to appear before you.

Mr. Chairman, our comments today are primarily directed at the U.S. Customs Service, an agency whose activities directly affect our industry. We have been and are now deeply concerned about the ability of the Customs Service to properly fulfil its overall mission which includes collection of revenues, control of borders, implementing trade policy, and protecting consumers as well as domestic industry. Customs has the difficult task of balancing its activities to this mission and Congress should make sure they do maintain such balance. As an example, if Customs does little with enforcement while working primarily to facilitate entry, we would feel there would definitely be an imbalance.

As you know, our industry is highly impacted by imports. Over 50% of our apparel market alone is now in the hands of imported garments. Overall imports in 1986 rose 17% over 1985 after a doubling between 1980 and 1984. Our trade deficit in 1986 was over $18 billion, and rising. The transactions or individual shipments which Customs must control have gone up proportionately. We do not have accurate information on Customs staffing during this period but we do know that the number of industry specialists has declined and automatic bypass procedures have increased dramatically as you have heard in previous testimony at Hearings dating back to July, August and September of 1984, and since. What we do know is that there have been attempts by this Administration to reduce even further the number of Custom's personnel while handling the ever-higher number of transactions.

Our comments today are not intended to cure the problem, only to make some suggestions as to how Customs might improve the "balance" of their mission. Such recommendations are as follows:

- Need for additional physical inspection by qualified personnel with adequate administrative support. According to Customs we understand approximately 1% of containers are now physically examined in whole or in part to insure that their contents conform with the accompanying paperwork. A goal to increase these inspections would be a significant deterrent to those that are considering illegal activities. This would show that Customs intends to do the job it is assigned to do. Our industry would be willing to assist in training Customs personnel by visits to domestic facilities and with industry experts.

- More overseas inspections by qualified personnel. This would be a major improvement in Customs' enforcement arm. Although certain countries and even our Ambassadors abroad have resisted additional U.S. personnel on foreign soil, we believe our government should take a firm stand to seek out and prevent illegal activity at its source. Certainly U.S Ambassadors can be directed to accept needed Customs officials.

- Serious consideration should be given to establishing a select list of ports of entry through which all textile and apparel products would be processed. Perhaps twelve ports which presently handle the largest volume could be specified. Qualified industry specialists and laboratory facilities could be readily available at these locations. This move could discourage the common practice of port shopping for the most favorable category and/or tariff classification.

- Improve the accuracy and timeliness of import data. Its reliability is widely questioned, even by our trade negotiators. Consideration should be given to changing methods by which the import data is transferred from the ports to the Bureau of Census import reports. There has to be a better system, or certainly better quality control.

Mr. Chairman, these are but four of the basic issues which we see for Customs Service improvement. We would be most happy to expand upon the reasoning for such changes either at this time or with backup material. We are obviously seriously concerned that Customs is not fulfilling its mission of adequately implementing trade policy as outlined in some twenty-eight bilateral agreements this country has with other countries under the Multi-Fiber Arrangement (MFA), and protecting industry from unfair trade. We compliment this Subcommittee for investigating this situation at these hearings and we encourage strong language and monetary support to help Customs to do its job.

Chairman GIBBONS. All right, sir. Fine.

STATEMENT OF CHARLES V. BREMER, INTERNATIONAL TRADE DIRECTOR, AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC., AND SECRETARY, AMERICAN FIBER, TEXTILE, APPAREL COALITION [AFTAC]

Mr. BREMER. Mr. Chairman, my name is Charles Bremer. As Mr. Blanchard has indicated, I am the international trade director of the American Textile Manufacturers Institute, and I am also the secretary of the American Fiber, Textile, Apparel Coalition on whose behalf we are appearing here today. And my remarks, like Mr. Blanchard's, will be concerned with the operations of the U.S. Customs Service, and primarily as they apply to imports of textiles and apparel.

As you know, Mr. Chairman, we do have in place a program of controls on imports of textiles and apparel of many years standing. It is the belief, however, of both ATMI and of AFTAC, that this program is a near shambles because Customs simply lacks the resources and manpower necessary to fulfill its role in administering this program.

Let us briefly review the statistical data in this respect. From 1980 to 1986, imports of textiles and apparel increased more than 2½ times in dollar terms, and 2.6 times in physical quantity terms. There has not, however, been a corresponding increase or anything close to it in the Customs staffing to properly verify, examine, document, and control this flood of imports.

And I will not mince words here. We are deeply concerned about fraud, fraud to evade the payment of import duties, as well as the restraints incorporated in our import control program. The types and varieties of such fraud are too numerous to detail here, but suffice it to say that they are limited only by the ingenuity of man.

It is a very serious problem, and one which has grave consequences for our industry. Our industry has already been sorely disadvantaged by legitimate imports of textiles and apparel. To ask us to further absorb the burden of illegitimate imports is, we think, asking a bit much. This is a problem which we insist requires remedial action, and the best place to start is by assuring that the Customs Service has the proper number of inspectors, specialists, and other personnel, as well as the proper tools, both here, in the United States, and abroad, to do its job properly.

Mr. Chairman, while I have not seen it, I daresay, and we can take this almost as a given, that the Customs 1988 budget request is probably inadequate insofar as it pertains to appropriations necessary to address and solve the problems Mr. Blanchard and I have briefly discussed today. I realize there is a keen sense, both within the Congress, and within the administration, to control Government spending and reduce our budget deficit. As a representative of private industry, and I might say, as a taxpayer myself, I heartily applaud all attempts to reduce the growth in Government spending. At the same time, however, I would point out that almost $4 billion in duties were collected on imports of textiles and apparel last year. Only the tiniest fraction of this sum was spent to monitor and regulate the imports on which these duties were collected.

Much more money is already available to fund Customs Service's proper enforcement of the textile and apparel import control program than has already been requested, and this without any penalty whatsoever to the American taxpayer. Now to be sure, the thieves and the cheats, both here and abroad, who are currently reaping large benefits from the program's inadequacies and loopholes, do not want to see these moneys spent. But I can assure you that domestic industry and its 2 million workers do want to see these money spent. In our view it will be money well spent.

Now the American Fiber, Textile, Apparel Coalition intends to submit a much more detailed statement with complete documentation for the written record and for the Subcommittee's further consideration subsequent to this hearing.

In the meantime, I want to thank you very much for the opportunity to present our views.

Chairman GIBBONS. Thank you, Mr. Bremer. Your figures, and the figures that our staff has developed are at variance, and I would ask the staff to furnish you with our figures, and we would like to have your——

Mr. BREMER. Which figure is that, sir?

Chairman GIBBONS. On penetration, import increases, and things of that sort.

Mr. BREMER. Fine.

Mr. BLANCHARD. May I also give this document to you by hand, sir. This is something that was handed to me this morning by one of our members as an example of some problems with Customs. It might just be something that you would be interested in seeing.

Chairman GIBBONS. I would like to have it.

All right, sir.

STATEMENT OF JAMES W. CHENOWETH, CHAIRMAN, CUSTOMS LIAISON TASK FORCE, AMERICAN IRON & STEEL INSTITUTE, (DIRECTOR OF CORPORATE AFFAIRS AND PRODUCT DEVELOPMENT, LONE STAR STEEL CO., DALLAS, TX)

Mr. CHENOWETH. Mr. Chairman, my name is Jim Chenoweth. Good to see you again.

Chairman GIBBONS. Good to see you again, Mr. Chenoweth.

Mr. CHENOWETH. I am director of corporate affairs, the Lone Star Steel Co., and I am here today as chairman of the American Iron & Steel Institute's Custom Liaison Task Force. We have submitted our testimony in full, I am going to give it to you in brief, so would appreciate if this was recorded in full.

Chairman GIBBONS. It will be, sir.

Mr. CHENOWETH. Because of the additional burdens that were placed on customs as a result of the President's steel program, the American Iron & Steel Institute visited with the Treasury Department concerned about that, and the Treasury officials invited members of my task force to visit major steel ports to review the staffing levels and procedures.

We have visited ten major steel ports, plus the Customs computer center in Virginia, and we have discussed our findings at two meetings with the senior Treasury people. They have implemented many of the things we have recommended. I feel like we have authority to come talk to you because we were right out on the firing line. We went down on the docks, in the warehouses, we watched them handle the papers, and we watched the computers when they worked and when they did not work.

We know how many people they are using, what rates of inspection there are, and so we gained an awful lot of information. Also, the first thing we cleared every time we visited one of these ports, was to let them know that we were not there for a showcase inspection tour, that we were there to find out what in fact was taking place.

And as soon as we went through that barrier, boy, they just opened up and let us have all the information. So we feel like we can tell you, firsthand, what the situation is.

At every port that we visited, we were impressed by the dedication and the professionalism of the Customs Service employees. I will tell you, under the circumstances, I would not do what they do.

The centerpiece of the Customs Service efforts to become more efficient and do more with less has been the automated commercial system, the ACS, and we agree with the Customs computerization efforts. We disagree with the idea that a bigger, better computer can replace enforcement people. That system should be pursued. It is just not there yet.

At nearly every port we visited, inspections were at levels so low, that unscrupulous importers have virtually no risk of being caught. There are such things as "port shopping", if you please, and if you find out that they are clamping down on inspection of such and such, you divert your goods and come in at another port.

And it is very clear. We saw freight stop within 20 minutes after the word got out that it was being inspected at a truck border crossing. So it is a very real thing.

We also noticed that we must increase the number of inspections by adding inspectors, and mandating that Customs increase substantially the number of inspections of high-risk cargo such as steel.

The Customs Service has substantially reduced the number of import specialists in recent years, but they should reverse this trend and take three specific steps regarding import specialists.

First, increase substantially the number of import specialists at least to the 1981 level at major steel ports.

Two, eliminate bypass altogether, except for the lowest of the low-risk products.

Three, integrate the import specialists into the ACS. Unbelievable. The import specialists do not have access to the ACS. All they could have—and we made this recommendation—a little PC on their desk would do it, and something like two to $3,000 per import specialist could make that available, but it is not in the program yet, and so it is not available to the people that could use it the very most.

With regard to the labs, we believe the Customs management should get high marks for procuring mobile laboratory equipment which detects misclassified steel products and returns a profit to the service.

There are five of these mobile labs at the present time in service. One "hit" in Port of Los Angeles paid for all of them. Hit. That is a term they use for finding an illegality.

So, we compliment them on that. The service has been dismantling, though, several of the fixed labs by layoffs and attrition, and we recommend that Customs maintain a strong combination of both mobile lab and fixed lab.

The most important development in Customs involves the ACS. Our principal concern with ACS is the automatic broker interface system, and we recommend that Customs transmit no data to the Census Bureau before a review of accuracy is made by an import specialist.

As it stands now, the import specialist is bypassed. He does not ever see those records that go from the broker Census.

Customs Service management is enforcement-oriented and anxious to do their job effectively.

We believe that Customs should not be saddled with the view that all Government employees are the same, and the fewer the better, because they are not the same. These people are exceptional people who turn a profit for the Government.

In sum, the restaffing of key enforcement positions to levels that reflect the demands placed on them by the importing community and domestic industries is urgent.

To do this, Congress should reject the OMB budget, give Customs access to the commercial user-fee account, and require that Customs increase its staff to the 15,250 level for fiscal year 1987.

AISI strongly supports the proposal by Senators DeConcini and Domenici, which would provide for 2,000 additional positions for Customs' commercial operations for fiscal year 1988.

These positions would include 1,000 additional inspectors, 400 import specialists, 400 entry clerks, and 200 special agents. All of these are badly needed. Thank you, Mr. Chairman.

[The statement of Mr. Chenoweth follows:]

TESTIMONY OF AMERICAN IRON AND STEEL INSTITUTE ON FISCAL YEAR 1988 BUDGET OF THE CUSTOMS SERVICE BEFORE THE SUBCOMMITTEE ON TRADE COMMITTEE ON WAYS AND MEANS

My name is James Chenoweth. I am Director of Corporate Affairs and Product Development, Lone Star Steel Company, and am here today as Chairman of the American Iron and Steel Institute's Customs Liaison Task Force. The American Iron and Steel Institute is a trade association whose 44 domestic member companies represent approximately 80% of the steel production capability in the United States. I would like to present the following comments on the current condition of our Customs Service and what needs to be changed to improve its ability to carry out its critical functions. Please bear with me, as much of what I have to tell you today is detailed and technical.

A properly funded and staffed Customs Service is important to the domestic steel industry because it is the government agency that classifies imports, collects duties on them, enforces the trade laws -- including the Voluntary Restraint Arrangements of the President's Steel Program -- and collects and reports data on imports to the Census Bureau. These functions are obviously very important to the domestic steel industry, not only because of the current need for effective enforcement of the President's Steel Program -- preventing fraud, etc. -- but also because the steel industry relies on the Customs Service to charge the proper duties on imported steel products and report import data to the Census Bureau correctly.

The importance of the duty collection function is obvious, since import duties -- even low ones -- have an impact on our markets. The import data function is just as important. Imports of steel products take a large share of some steel product markets -- in Lone Star Steel's oil country tubular goods, for example, import penetration in 1986 was 59%. Therefore, for domestic steel companies to be able to predict market activity for production, employment and investment purposes, it is critical that the Customs classify imports correctly. Thousands of jobs and millions of dollars are at stake.

The American Iron and Steel Institute has been active over the years in attempting to ensure that Customs is in a position to carry out its duties. When requested by Customs management, we have run technical training seminars on steel product identification for import specialists, laboratory personnel, and inspectors. In addition, we have been active in the Senate and in the House when Customs budget issues were under consideration. In that regard, we have been particularly concerned in recent years that Customs budget requests have not been large enough to ensure that the Service would be able to carry out its functions effectively. As a result of our representations to the Administration, and in light of the additional burdens placed on Customs enforcement personnel as a result of the President's Steel Program, senior Treasury officials in May 1985 invited members of my task force to visit major steel ports to review staffing levels and procedures. As a result of this invitation, we have visited 10 major steel ports and the Customs computer center in Virginia and have discussed our findings at two meetings with senior Treasury and Customs officials. We believe that some of our findings may be of interest to the Committee. Our comments today will focus on the Customs issues of most importance to the steel industry -- import specialists, inspectors, laboratory personnel staffing levels, and the development of the Customs Service's computer capability.

First of all, at every port we have been impressed by the dedication and professionalism of the Customs Service employees whom we met. They have been laboring under very difficult conditions in recent years due to the severity of personnel reductions and huge increases in work loads. These import specialists, inspectors, and laboratory personnel are the people who have had to do the "more with less" that members of Congress have been hearing about in Customs Service budget requests for the past five or six years. Despite the superior efforts of officials at the port, "more with less" has not in our view, worked.

The centerpiece of the Customs Service's efforts to become more efficient and do more with less - has been the much touted Automated

Commercial System (ACS). We in the steel industry -- involved as we are in our own modernization programs -- strongly support the Services' computerization efforts. Where we part company with Customs management is in the belief that a bigger and better computer can replace enforcement people. A computer cannot classify or inspect steel, or take samples. A computer, however, can increase the efficiency of those who do. And with the huge increases in imports that we have seen in recent years it seems to us that we need more people and more computerization. At nearly every port we visited, inspections were at levels so low that unscrupulous importers have virtually no risk of being caught. For example, in Los Angeles much less than 5% -- and maybe less than 1 or 2% -- of the steel is inspected. The situation is not much better in other major steel ports such as Houston or Charleston, SC. In some ports there are only enough inspectors to inspect one commodity line at a time -- generally high visibility products such as steel or textiles. Other products are simply shuttled on through.

In making these comments on inspections, we do not mean to suggest that Customs should not be selective in what it inspects. We agree with the general approach that Customs should concentrate on high risk cargo and use its improved ability to be selective about what to inspect. Our concern is that there are simply not enough inspections. This situation is even more serious as regards products that are imported in containers, where inspections at the ports we visited are only a small fraction of one percent. Illegal imports of all kinds -- including drugs -- have almost free access to our country if they are shipped in the back of a container. Fortunately, not much steel is shipped in such containers. We believe that the only way to solve the problem of too few inspections is to add inspectors at major ports and mandate that Customs -- using selectivity criteria that it now has in its ACS -- increase substantially the number of inspections of high risk cargo, such as steel and textiles.

What about import specialists, the people who classify imports, assess duties, and catch fraudulent importations? The Customs Service has substantially reduced their number, too, in recent years. And we believe that these reductions are even less justifiable than those in the inspectors' ranks because computerization -- though used to justify the reductions -- has not reached them. Import specialists must still "push paper". To reduce their numbers during a period when imports have substantially increased is totally unjustifiable. In the case of steel, demands on them related to enforcement of the President's Steel Program have increased their duties dramatically and at the same time reduced their ability to do their jobs at the level of efficiency that we, and I am sure they, would like.

Of course, because of the steel program and the demands on the Customs Service to enforce it, we -- along with the textile industry -- have to some extent gotten priority treatment. Other industries' products, including steel-intensive products, are "bypassed" -- a Customs term that means in effect that the products are allowed to enter without review by an import specialist as to the proper duty to be paid, or classification declared. One steel importer -- to give you a real life example -- trying to take advantage of this system, attempted to enter a quota product in a category that he knew would be bypassed. He was successful: but this circumvention of the President's Program was stopped when a steel industry sales representative found out about the scam and reported it to Customs.

We believe the Customs Service could improve enforcement of the trade laws and at the same time improve the efficiency with which it processes and expedites cargo if it took three specific steps related to import specialists.

(i) Increase substantially the number of import specialists now processing entries at the major ports of entry. In the case of steel, we believe that the number of import specialists should be returned at least to the levels which obtained in the 1981 period at major steel ports.

(ii) Eliminate bypass altogether except for the lowest of low risk products. Bypass, which does not involve steel but does include steel-intensive products, covers over 50% of all entries at some ports. This rate should be lowered substantially.

(iii) Fully integrate the import specialists into the ACS as soon as possible. The current ACS development plan as we understand it does not include the full integration of the import specialists into the system until almost the end of the development process. We believe there should be an ACS terminal at each import specialist's desk.

With regard to Customs Service laboratories, we believe that Customs management should get high marks for their willingness to procure the equipment that is needed and used in inspecting steel imports. These machines, such as mobile metal analyzers, have been shown to be effective in detecting misclassified steel products -- and they turn a profit for the Customs Service. On the other hand, with regard to the Customs Service's six fixed laboratories, the Service over the last few years has apparently been involved in dismantling several of them by layoffs and attrition. We are deeply concerned about this process and its effect on the Service's ability to sample and test imported products, and especially on its ability to man and use the mobile metal analyzers.

We recommend, with regard to the future of the Customs laboratory system, that Customs ensure that -- certainly for steel -- a strong combination of mobile and fixed laboratories should be maintained.

The most important development project underway in the Customs Service involves the ACS. Our principal recommendation here, in addition to the one above involving the import specialists, affects the part of the system known as the automated broker interface (ABI) system. This system allows customs brokers to transmit data on importations directly to the Customs Service and the Census Bureau. Our problem with ABI entries is that the data sent to the Census Bureau -- unlike all other steel entries -- are not verified for accuracy by the import specialists. This is due to the fact that the import specialists are not integrated into the ACS and will not be for some time, and because Customs does not require the customs brokers to obtain from the import specialists approval of an entry prior to transmitting it to Census. Of particular concern is the fact that even when the import specialists are brought into the ACS, there is no plan to require the ABI brokers to submit their entry data to the import specialists electronically. Given the importance of correct import data to the steel industry, we are deeply concerned about this loophole. Our recommendation on this subject is simple: transmit no import data to the Census Bureau before a review for accuracy by an import specialist.

So far our statement has centered on the problems we in the steel industry have seen in our study visits around the country and not directly on Customs management as such. I'd like to state here our belief that in recent years, during what has been for Customs a period of some crisis, Customs Service management has done an excellent job. It is our experience with senior management at Customs and Treasury that they respond to problems effectively -- if they have the resources. In several situations involving inefficiencies we observed at several ports, when Customs was informed of the problem, management moved immediately to make corrections. We have found most of the managers with whom we have dealt to be enforcement-oriented and anxious to do their jobs effectively. We believe that the source of the problems now facing the Customs Service stem from a myopic and simplistic view that all government employees are the same, and the fewer the better. In the case of the Customs Service, this attitude has proven to be disastrous. Customs is a highly profitable organization returning approximately $20 to the Treasury for every dollar spent. Moreover, a properly funded and staffed Customs Service adds to the efficiency of the economy generally by the expeditious processing of cargo through the port system.

In sum, we believe that the principal thing the Customs Service needs today is a new attitude of "more done with more". Restaffing of key enforcement positions to levels that reflect the demands placed on them by both the importing community and domestic industries -- such as steel -- is urgent. To do this, the Congress should, we respectfully submit, first reject the budget for customs that has been sent to Congress by OMB. We recommend that instead the Customs Service be allowed access to the monies now building up in the Commercial User Fee Account and that Congress require that Customs increase its staff to the 15,250 level for FY 1987. AISI strongly supports the proposal by Senators DeConcini and Domenici, which would provide for 2,000 additional positions for customs commercial operations for FY 1988. These positions would include 1,000 additional inspectors, 400 import specialists, 400 entry clerks, and 200 special agents -- all badly needed. If these recommendations are adopted, we shall then have the thoroughly effective -- and cost-effective -- Customs Service this economy must have and maintain.

Chairman **Gibbons**. Well, thank you. They are very sobering provisions that you have talked about here, and we will try to do the best we can. As I say, we always start off on the defensive, 2,000 employees short, and by the time we expend the energies necessary to get them back in the budget, you do not get much sympathy from the rest of Congress, and that is a problem that we have.

We will try to take that other panel's suggestion, that maybe we ought to limit the time for some of these entries, and do what you all have suggested here, too.

Thank you all very much.

This concludes the hearing for today.

[Whereupon, 1:50 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

RECEIVED
MAY 11 1987
SUBCOMMITTEE ON TRADE

United States Department of State

Washington, D.C. 20520

MAY 11 1987

Dear Mr. Chairman:

As you know, on March 30, 1987 the Senate passed and sent to the House S. 829, a bill to authorize appropriations for the U.S. International Trade Commission, Customs Service and the Office of the United States Trade Representative.

There are two specific sections of the bill on which the Department wishes to comment. These are the sections dealing with the Customs user fee and the prohibition on the importation of articles from the Soviet Union which may have been made by forced labor.

The Department of State strongly objects to Section 5 of S. 829. This section would prohibit the importation of all gold ore, agricultural machinery, tractor generators, tea, crude petroleum, motor fuel and kerosene from the U.S.S.R. on the grounds that these products may have been produced, wholly or in part, by convict, forced or indentured labor. These items could only be imported into the United States if the President submits a written statement to the Congress which confirms that the items are not being produced, wholly or in part, by such labor or that they are needed for national security purposes.

The Department of State believes there is no factual basis for the punitive steps contained in Section 5. To the best of our knowledge, the evidence available to the U.S. Government does not establish a connection between Soviet forced labor practices and specific imports from the Soviet Union. Moreover, we are not aware of any new evidence which contradicts this finding. To the extent that adequate information is available, products produced by such labor are already subject to exclusion under current legislation and regulations.

The Honorable
Dan Rostenkowski, Chairman,
Committee on Ways and Means,
House of Representatives.

The products listed in Section 5 represent a substantial portion of Soviet exports to the U.S. Closing the U.S. markets to these goods would have serious political as well as economic repercussions. Gold alone represented nearly fifty percent of all Soviet exports to the U.S. in 1986. It is certain that the U.S.S.R. would respond to a ban on these imports with matching restrictions on U.S. exports to the U.S.S.R., including inter alia, restrictions on our sizeable sales of agricultural commodities. Moreover, such a unilateral U.S. ban would unnecessarily threaten our broader political relationship.

The Department of State shares the concerns of those repelled by the Soviet forced labor system and has strongly condemned Soviet prisons and especially the incarceration of political prisoners. Prohibitions such as those in Section 5 do not further the United States' objective to improve Soviet human rights practices. On the contrary, such restrictions only serve to limit our influence over Soviet behavior without affording a corresponding benefit to U.S. interests.

With respect to Section 4, the State Department wishes to confirm our view that the user fee is consistent with the GATT to extent that the fee is limited in amount to the approximate cost of services rendered and was not represent an indirect protection of domestic producers or taxation of imports for fiscal purposes. Earmarking the funds generated by the customs user fee to pay the cost of services rendered would be most appropriate to ensure GATT consistency. In that connection the administration has proposed as part of its comprehensive competitiveness initiative, the "Trade, Employment and Productivity Act of 1987," to permit the Treasury Secretary to prescribe and collect customs user fees in certain situations. This initiative is described in greater detail in the Treasury's report to you on S. 829, which you received, or should receive shortly.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

With best wishes,

Sincerely,

J. Edward Fox

J. Edward Fox
Assistant Secretary
Legislative and Intergovernmental Affairs

STATEMENT OF THE HONORABLE DON BONKER
BEFORE THE SUBCOMMITTEE ON TRADE

"Reauthorization of the U.S. Customs Service"

May 12, 1987

Mr. Chairman, I appreciate the opportunity to present my testimony today as your subcommittee reviews the operations of the U.S. Customs Service. Over the years, I have expressed my concerns about Customs procedures which have been detrimental to U.S. trade, especially to policies which have hurt the competitiveness of individual ports. Today, however, I have come before the subcommittee because I am extremely troubled by our increasing reliance on "user fees" to cover port and Customs costs. In particular, I am concerned about the competitive disadvantages these fees impose on Foreign Trade Zones.

In 1934, when FTZs were originally designed, they were to be secure areas within the United States considered outside the Customs territory of the United States. Merchandise could be stored, inspected, assembled and manufactured in these zones without prior payment of customs duties as a way to make U.S. products more competitive overseas, to retain U.S. manufacturing operations, and to stimulate greater export activity. Today, with our country facing a $170 billion trade deficit, the need to further encourage exports cannot be overstated.

Last Spring, as the subcommittee knows, I introduced legislation to prohibit the Customs Service from implementing any user fees on Foreign Trade Zones that would destroy their competitive benefits. The Customs Service had proposed a schedule of activation and operational fees in the Federal Register (51 FR 5040-5067, February 11, 1986) which went well beyond compensation for overtime, special audit inspection, and other legitimate commercial activities. It threatened to completely deny FTZs the competitive privileges they were designed to enjoy.

Since that time, Customs and the FTZ Association were able to work out a revised user fee schedule which was less burdensome and more fair. Nevertheless I remain deeply opposed in principle to any form of user fee and continue to be troubled by the impact of these fees on the competitiveness of zones.

Foreign Trade Zones are now facing a more serious financial burden as a result of the merchandise import fee assessed under the Budget Reconciliation Act of 1986, P.L. 99-509. Without a change in the present fee structure, FTZs would be required to pay twice for Customs operations, a situation that is both unfair and that would certainly eliminate any competitive advantage FTZs now enjoy.

A final decision on the actual structure for assessing Foreign Trade Zones the two fees is still under review by the Customs Service following their request for public comment earlier this year. Fortunately, the Budget Reconciliation Act granted the Customs Service discretion to reduce fees in cases similar to that confronting FTZs. I believe that the law and congressional intent should make clear to Customs that the temporary merchandise import user fee should supersede, not run concurrent to, the annual operation fees assessed FTZs. My understanding, however, is that the Customs Service is considering a different interpretation.

Last week, I introduced new legislation, H.R. 2338, because of my concern over how the Customs Service will implement the import user fee. My bill would guarantee the continued competitiveness of FTZs in two ways. First, to protect zones from double taxation, it would prohibit the Customs Service from implementing activation and operation fees during the period of time that the merchandise import user fee is in place. Secondly, it would protect zones in the future by prohibitting the Customs Service from putting into place any fee structure which would offset the operational benefits, negate the tariff benefits, inhibit new zone activation, or lessen the competitive export advantages of Foreign Trade Zones.

Substituting the merchandise import fee for the activation and annual fees imposed on FTZs is a fair solution that will guarantee the continued competitiveness of zones while providing Customs with adequate fees to cover monitoring costs for FTZs. As the purpose of both fees is to raise revenues to cover the costs associated not only with the commercial operation of FTZs but also for all other Customs Service operational costs, the present situation is clearly discriminatory and unacceptable.

Congressional intent, as described in last year's Budget Reconciliation Act, appears clear that the temporary customs import user fee was designed to take precedence over other customs user fees during the period it is in effect. In the case of FTZs, this is both fair and equitable. The role of the U.S. Customs Service should be to facilitate our international trading system, not to impede it and inhibit our ability to compete effectively overseas.

Foreign Trade Zones provide companies doing business in the United States with the maximum possible flexibility in managing Customs expenses. In many instances, zones provide the only alternative to locating facilities outside the United States for minimizing Customs costs. Zones continue to be a positive force for United States economic development and competitiveness. In FY 1985, there were 1,409 firms using zones, employing 71,508 people. Their facilities received $30.8 billion in merchandise and exports amounted to $6.57 billion. The FTZ program has evolved from a few zones in major ports up to as late as the 1960s to over 140 general purpose zones and 100 subzones today.

Mr. Chairman, I urge the subcommittee, as it drafts Customs reauthorization legislation, to consider the fee structures which threaten the continued viability of Foreign Trade Zones. It is my hope that clarifying language, similar to the provisions of H.R. 2338, will be included in your bill to provide clear guidance to the Customs Service on how fees should be assessed to zones so that their competitive advantages will be maintained.

JOHN C. STENNIS, MISSISSIPPI, CHAIRMAN

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United States Senate
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WASHINGTON, DC 20510-6025

COMMITTEE ON
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April 21, 1987

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APR 22 1987
SUBCOMMITTEE ON TRADE

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The purpose of this letter is to emphasize my deep concern that the fiscal year 1988 Customs Authorization bill contain authorization spending levels sufficiently high enough to accommodate significant improvements in Customs operations, including commercial operations; annualization of the anti-drug enforcement efforts of FY 1987; and the upgrading of facilities along our Southwest border. Knowing of your interest in all activities of the Customs Service, and our shared hopes to put those operations on an enhanced level, I feel it is important to share my views with you as you contemplate markup of the FY 1988 Customs Service authorization bill.

As you know, over the past several years, considerable emphasis has been placed on the bolstering of the Customs Service's enforcement operations, particularly narcotics interdiction. I believe that these enhancements were totally justified and long overdue. I also believe that these enhanced levels of Customs enforcement personnel and activities should be adequately annualized in fiscal year 1988. At the same time, I firmly believe that it is time to focus increased attention on the commercial operations of the U.S. Customs Service, especially in light of the prospects for major trade legislation in this session of the Congress.

As you will note from the detailed enclosures to this letter, my major concern regarding the Customs Service budget for the coming fiscal year focuses on the commercial side of the agency's operations, with major enhancements in both personnel and equipment to significantly improve the Service's commercial operations. I believe that there is strong evidence that an increase in Customs commercial operations of the magnitude I am proposing will not only improve the service of this critical agency to the trade community, but will actually result in increased revenues to the Federal Treasury. This proposal would increase commercial operations staffing at Customs by approximately 2,400 positions and, based on testimony presented to my Subcommittee, this level of new positions could produce $1.3 billion in new revenues to the Treasury.

Specifically, as I view the commercial operations requirements of the Customs Service for fiscal year 1988, enhancements in these services will almost certainly have to include a significant number of inspectors and import specialists -- the backbone of the Customs commercial operations program. Also, I believe that there exists a need for additional technical support personnel, such as auditors, attorneys, and legal clerks; cashiers and entry aids; specialists who resolve seizure and penalty cases; personnel to handle Customs' expanding automated systems and contractor personnel to provide specialized guidance in the implementation of the Automated Cargo System and other technological initiatives at the agency. I also believe that there needs to be an increased effort to crack down on commercial fraud at the ports of entry through improved enforcement of our tariff and trade laws currrently on the books.

In addition to these personnel improvements within the Customs commercial operations program, I feel very strongly that Customs must initiate a program for repairing, improving, renovating, and redesigning our Southwest border processing facilities. Border facilities in my state have deteriorated to the point where neither the commercial nor law enforcement interests of the United States Government are being protected or enhanced. I intend to introduce free-standing legislation to authorize a multi-year program for improving all of our border facilities, both at Customs and other border agencies, and your initiative to provide sufficient room in the Customs Service salaries and expenses budget for these border improvements will be deeply appreciated.

The budget proposal includes $77.7 million to repair, improve, renovate, redesign, and/or replace Southwest border processing facilities in Texas, New Mexico, Arizona, and California. I have been working with the Customs Service and the General Services Administration to prepare a detailed analysis of the specific border facility improvement projects that should be given the highest priority for funding in fiscal year 1988. To date, three Customs districts have been surveyed by the Customs Service and the GSA has provided me with an overview inventory of facilities along the entire southwest border. Specifically, Customs has completed a survey of the Laredo, El Paso, and Nogales District border facility requirements. The funding recommended in the budget plan will provide an excellent head start on addressing those needs in at least these three districts.

Finally, the budget proposal for Customs would annualize the personnel levels approved in fiscal year 1987 for Customs drug enforcement and other important activities outside of the commercial operations elements. The budget proposal, as reflected in the enclosures, will also provide a level of funding for the Operation and Maintenance, Air Interdiction Program that is below current fiscal 1987 levels but adequate to both annualize last year's Anti-Drug Abuse Act enhancements and provide a small amount of money for new initiatives in the air program next year.

In conclusion, I believe that a budget of $1,267,000,000 for Customs is appropriate in light of the tremendous pressures and responsibilities being placed on the agency in the area of trade, commercial fraud, illegal imports and exports, and drug enforcement. I am also fully cognizant of the challenge facing your Committee and mine to accommodate this enhanced level of funding within an overall budget ceiling that will address the deficit reduction goals under current law. Your approval of the level of funding recommended in this letter will go a long way toward significantly improving our commercial services to the trade community and improving our overall U.S. trade picture.

Mr. Chairman, I deeply appreciate your continued support of the U.S. Customs Service and it has been my privilege to provide this detailed assessment of what the resource requirements of this important revenue and law enforcement agency will be in the coming fiscal year. If I can be of any further assistance to you or the Committee now or in the future, please do not hesitate to call on me. I have also directed my Appropriations Committee staff to work with your staff on the Ways and Means Committee in crafting the Customs budget for fiscal 1988.

With best wishes.

Sincerely,

Dennis DeConcini

Dennis DeConcini
Chairman
Subcommittee on Treasury, Postal
Service, and General Government

DDC/bmm

DETAILED ATTACHMENTS

Salaries and Expenses:	
Annualization of Customs Commercial Operations:	$559,000,000
Salaries and Expenses:	
Annualization of Other Customs Service Programs:	$358,000,000
Southwest Border Facilities Improvement Initiative:	$77,700,000

This initiative would begin a three year effort to repair, alter, renovate, and/or replace border facilities along the entire southwest border. These projects would range from total replacement of current border stations to major repairs of current facilities. This initiative would also, if necessary, establish new border facilities along the southwest border to facilitate the legitimate flow of commerce across the U.S.-Mexico border. Accommodation would be made for the facilities requirements of the Customs Service in conjunction with the Department of Agriculture; the Immigration and Naturalization Service; and the General Services Administration. Surveys of the specific border facilities needs of these agencies are on-going and partially complete.

Operation and Maintenance, Air Interdiction Program:	
Regular Air Program:	($17,284,000)
Support of Military Assets:	($37,262,000)
Other Current Air Assets:	($38,004,000)
Aerostats; Spares; C-3I and New Air Program Initiatives:	($47,450,000)
TOTALS: O&M AIR:	$140,000,000
Customs Forfeiture Fund:	$10,000,000
Customs Commercial Operations Enhancement:	$122,300,000
GRAND TOTAL: DeConcini-Domenici Recommendation, U.S. Customs Service Budget, Fiscal Year 1988:	$1,267,000,000

Customs Commercial Operations Enhancement

Inspectors:

Additional Positions Requested 1251 $49,500,000

Inspectors are an integral part of Customs overall commercial processing cycle. They facilitate the flow of international air, sea, and land traffic and persons along with examination and release responsibility for all types of imported commercial merchandise. Only minimal increases in inspector staffing resources have been forthcoming in the last several years in conjunction with the increased narcotic, security and enforcement threats faced by Customs almost exclusively along the Southwest border. These slight increases have been at the cost of reduced staffing levels at the majority of other Customs locations while both imports and traffic growth have oontinued to climb nationwide. The additional resources requested will help to relieve the continuing pressure on the inspectional workforce to do more with less in the face of a specific legislative mandate to provide an increased level of Customs service. The increased inspector resources will reduce vehicle waiting times by 50 percent, reduce waiting times at airports during peak hours by 33 percent (from 45 minutes to 30 minutes) and reduce release times at cargo processing operations by 25 percent as well as significantly reduce cargo release times when no violations are found.

Import Specialists

Additional Positions Requested 523 $18,000,000

Import Specialists perform high-level functions related to entry, admissibility, quota, appraisement and classification of merchandise. For the past four years, Import Specialist staffing levels have remained constant, while overall workload has grown steadily not only in sheer numbers of formal entries (60% increase from FY 1982 to 1986), but also from the heightened focus on trade sensitive areas such as textiles and South African Sanctions; and the new requirement to review and process duty free entries in order to determine user fees. In FY 88, implementation of the Harmonized System will greatly impact workload for Import Specialists. Since items are classified differently under this system, extensive training is necessary, and a sharp decrease in by-passed merchandise will result. With additional staffing in this area, Customs could minimize the risk of revenue loss through more thorough initial review of entries, and through increased "post-audit" verification, because both the by-pass rate and the ratio of entries per import specialist could be lowered. Also, in the area of enforcement, additional staffing would increase the number of violation detections.

Technical Support

Additional Positions Requested 63	$3,100,000

Technical support positions such as Auditors, Attorneys and Legal Clerks, and Laboratory positions provide vital support to Customs commercial activities. Assuming that staffing levels in other areas will increase (Inspectors, Import Specialists, Agents, etc.) there will be work generated in technical support areas. Additional staffing in these areas is essential to handle this increase in workload.

Heavy legal caseload is expected due to user fees in the areas of commercial fraud, copyright, trademarks and country of origin. Additional caseload will also result from the Drug Interdiction Initiative and the Harmonized System. Current staffing levels for attorneys and legal clerks are not sufficient to meet these new demands without delays or without creating a situation of potential revenue loss (i.e. the statute of limitations cannot run out). Laboratories will be receiving more samples as the new classificattion system goes into place, and additional staffing in this area will allow them to maintain their current level of productivity. An increase in staffing will enable Laboratories to provide sufficient technical support to the Southwest Border Initiative and the Drug Screening Program, and it would fill the void in non-textile areas which resulted from the shift in resources to support textiles. Additional auditors will be needed to ensure compliance with the various user fee exactions in the C.O.B.R.A. Prior to implementation of the user fees, the number of Customs auditors has not been adequate to meet current workload demands due to increasing complexity and surging growth in areas that have traditionally been audited (bonded warehouses, foreign trade zones, etc.).

Support

Additional Positions Requested 402 $14,500,000

Customs Aids:

Customs Aids (cashiers, entry aids, textile aids) free Import Specialists to perform the higher-level tariff administration and enforcement duties. Without sufficient staffing in this area, only minimal relief can be provided to import specialists at ports with the heaviest workload. The added burden of collecting user fees caused a 40% workload increase in collections, a 25% increase in fee related protests, and an almost 15% increase in bond sufficiency reviews. Operating at our current staffing levels, we can expect serious backlogs in collection and protest processing, cashflow delays at Customs busiest ports; and considerable increases in entry processing delays. Additional resources would provide one Textile Aid for every two Import Specialist Teams; cashflow would be greatly improved; processing times for summary and quota entries would be significantly reduced; and fewer input errors and ACS errors would occur.

F,P&F Specialists: (Fines, Penalties, & Forfeiture)

F,P&F Specialists resolve seizure, penalty, and liquidated damage cases to a civil administrative solution. In many cases, they initiate summary or judicial forfeiture proceedings to effect the forfeiture of seized items. Assuming that staffing levels in other areas (Import Specialsits, Inspectors, Agents, Auditors) will increase, there will be more fines, seizures and liquidated damage cases to process. Current staffing levels in the F,P&F Program, which have not increased in recent years, are barely adequate to support the recent drug enforcement expansion, and can only provide minimal staff in Customs busiest locations. This causes considerable backlogs in F,P&F cases. More F,P&F Specialists are needed to minimize the backlog of cases, and to support the expansion of drug enforcement efforts and fraud programs. It will also accelerate the implementation of the F,P&F ACS module by 38%.

ACS:

Additional Positions Requested 37 $1,800,000

As Customs has developed its automated systems capabilities to meet with the increased workloads, it has been faced with a rapid growth in system requirements, user needs and desire for enhancements. The result is that there are not enough resources available to meet all demands. User fees have placed an additional burden on Customs by adding to that demand. For example, the various user fees we must implement have required us to reprogram and modify existing programs in order to accomodate their collection. As enforcement continues to be emphasized and the demand for adequate and expeditious service continues, so does the demand for system access and capabilities increase. Additional resources will be used to meet these demands. Specifically, they will be devoted to accelerating development, testing and implementation of new modules and enhancements; to expansion and modification of existing capabilities; to increasing ABI and manifest participation; and to providing us with increased commercial enforcement capabilities. Provision of additional terminals will provide for: full manifest processing at most seaports; nationwide selectivity capability; full import specialist participation; and sufficient capability to FLETC for training purposes.

Contractor Support

Additional Resources Requested $5,400,000

The additional contractor support is for ACS ($1.3 million) and for contract data clerks ($4.1 million). Acquisition of these personnel will allow us in FY 1988 to continue our acceleration of ACS module development, interfaces, and enhancements, including computer based training; marketing; and trade interface implementation. Contract data clerks will be used to free other entry personnel to perform functions which cannot be contracted out because of security risks or difficulties. These clerks will be used to input CF 3461 data for selectivity, input CF 7501 data, to do no change liquidations, and perform in-bond functions.

Equipment

ACS Terminals

Additional Resources Requested $11,100,000 (one-time)
$ 3,700,000 (recurring)

Addition of these terminals will provide for full manifest processing at most seaports as well as give to FLETC terminal capability for ACS training. It will also provide for complete nationwide selectivity, including northern and southern borders, and it will permit full import specialist participation in ACS as well as assuring that a sufficient number of terminals are available to support future ACS modules.

Border Terminals

Additional Resources Requested $500,000 (one-time)

This equipment will replace all Southwest land border primary terminals providing them with enhanced capability since these terminals will perform all current functions as well as providing TECS II enforcement capability. These terminals will expedite vehicle processing and cargo release on the Southwest border.

Airport Terminals

Additional Resources Requested $7,500,000 (one-time)

Adequately fulfilling additional equipment needs is a vital link in Customs ability to provide an increased level of service to the public. Specifically, in the air passenger processing area, many existing TECS terminals are antiquated and would be incompatible with Customs conversion plans for TECS II, which is to become operational in the near future. Also, not all primary terminals are equipped with passport readers. The replacement of all primary TECS terminals (with passport readers) and the replacement of secondary terminals will help ensure that inspectors have the most modern, up-to-date equipment available for screening and processing in order to expedite arriving international air passengers.

Centralized Cargo Examination Station Inspectors & Equipment

Additional Resources Requested $7,200,000

Additional Positions Requested (145 positions)

Customs is in the process of implementing a centralized cargo examination initiative on a nationwide basis. Under this initiative, Customs would centralize its container examinations in an intensified effort to target commercial fraud and expedite cargo clearance. With the additional resources recommended under this activity, a significant effort will take place along the southwest border, including El Paso, Laredo, and other ports within Texas, to establish these cargo "devaning" operations and provide more inspectors and equipment in those locations. This anti-commercial fraud initiative is an important element of a comprehensive commercial operations enhancement effort.

GRAND TOTAL: Commercial Operations Enhancement: $122,300,000

ONE HUNDREDTH CONGRESS

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CHIEF COUNSEL/STAFF DIRECTOR

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

GW

June 8, 1987

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
1135 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to urge your support for an increase of at least 2,000 FTE positions for the U.S. Customs Service in the Fiscal Year 1988 authorization.

The Oversight and Investigations Subcommittee has spent four years investigating the impact of unfair and illegal foreign trade practices. During the course of this inquiry, we have heard public testimony from Customs officials on a number of occasions regarding the growing problem of commercial contraband. On April 9, 1987, Commissioner von Raab and eleven Customs employees from around the country testified regarding the rapidly increasing problem of commercial Customs fraud. We are attaching a copy of that testimony.

It is critical that this increase be dedicated to commercial operations. Recent increases in Customs positions have largely been devoted to narcotics interdiction. For example, the Commissioner has testified that in anticipation of being able to tap the user fee account established in the Continuing Resolution for commercial fraud investigations, he allocated virtually all new agents last fall and winter to narcotics. As you are aware, access to the user fees has been held up by OMB.

The National Treasury Employees Union has suggested that the 2,000 new positions involved 1,250 inspectors, 525 import specialists, and the remaining 255 positions for agents and support personnel dedicated to commercial fraud. Our investigation suggests that increases in all these categories are sorely needed. An increase of at least 20 agents assigned to overseas posts is absolutely essential for an effective effort against the transhippers of the world.

Sam, you have fought with us year after year against the addlepated thinking in OMB that says we need less Customs employees, not more. The most conservative estimate of the return to the Federal Treasury for each new commercial operations employee is 7-1. CBO says Customs employees return about 15-1 at the margin and the average return on dollars expended for commercial operations is about 37-1.

Hence, the $140 million or so it may cost in FY 88 to add these positions should return well over $1 billion to the Federal Treasury next year with the long term return much higher.

Revenue enhancement, however fortuitous, is only a residual benefit. It simply does not matter how carefully we draft trade laws to protect U.S. companies, workers, and communities from unfair imports if the exporters believe they can violate this provision with impunity because there are not enough cops minding the store.

Illegal imports have been more responsible than any other factor in the failure of the steel and textile import restriction programs. Transshipment of semiconductors have us in the present difficulty with Japan. The intellectual property of our citizens is being stolen abroad and then returned to our market through under-manned ports.

We and many other Members of the Energy and Commerce Committee stand ready to support you in any way we can to assure an effective effort against commercial contraband.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

Norman F. Lent
Ranking Republican Member
Subcommittee on
Oversight and Investigations

Enclosure

cc: The Honorable Dan Rostenkowski
Chairman, Committee on Ways and Means

The Honorable John J. Duncan
Ranking Republican Member, Committee on Ways and Means

The Honorable Jamie L. Whitten
Chairman, Committee on Appropriations

The Honorable Silvio O. Conte
Ranking Republican Member, Committee on Appropriations

The Honorable Edward R. Roybal
Chairman, Subcommittee on Treasury--Postal
Service--General Government

The Honorable Joe Skeen
Ranking Republican Member, Subcommittee on Treasury--
Postal Service--General Government

The Honorable Lloyd Bentsen
Chairman, Committee on Finance

The Honorable Bob Packwood
Ranking Republican Member, Committee on Finance

The Honorable John C. Stennis
Chairman, Committee on Appropriations

The Honorable Mark O. Hatfield
Ranking Republican Member, Committee on Appropriations

The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury, Postal
Service, and General Government

The Honorable Pete V. Domenici
Ranking Republican Member, Subcommittee on Treasury,
Postal Service, and General Government

COMMERCIAL FRAUD ENFORCEMENT

TESTIMONY OF
WILLIAM von RAAB
COMMISSIONER
U.S. CUSTOMS SERVICE

BEFORE THE
OVERSIGHT AND INVESTIGATIONS
SUBCOMMITTEE
ENERGY AND COMMERCE COMMITTEE

APRIL 9, 1987

Mr. Chairman and members of the Subcommittee:

I am pleased to appear before you to discuss Commercial Fraud Enforcement by the U.S. Customs Service which continues to be a major priority requiring an ever increasing allocation of resources.

In recent years, there has been a subtle change in the methods by which the United States has sought to regulate importations. Increasingly, import tariffs have been supplemented or replaced by non-tariff controls, such as negotiated quotas or voluntary restraints. These mechanisms have evolved as a method of allowing access to our markets, while, at the same time preventing serious disruption of our domestic industries. While these non-tariff regulating mechanisms are principally established and monitored by other agencies and departments, such as the U.S. Trade Representative, Departments of Commerce and Agriculture , etc., it continues to be a principal mission of Customs to prevent circumventions of these controls.

We have continually adapted to changes in the methods by which unscrupulous traders and importers have sought to defraud our trade policies. Whereas, at one time, our examination and investigative efforts were largely concentrated on schemes to avoid payment of duties, we have now targeted our efforts against ever evolving schemes to circumvent changing methods of regulating imports.

Our national steel fraud importation program is an excellent example. The worldwide steel manufacturing glut of the late 1970's and early 1980's provided a powerful temptation to sell various steel products to the United States at less than fair market value. In response, the Department of Commerce instituted the "Trigger Price Mechanism" (TPM) as a method of monitoring the possible dumping of these products. As a result, several unscrupulous exporters and importers developed schemes to evade the TPM by overvaluating and misdescribing steel products.

Customs responded by initiating a renewed multidisciplined approach to the problem and impressive criminal sanctions and civil recoveries have been obtained against the violators - most impressively, to date, MITSUI pled guilty to 21 criminal felony counts and paid $11.2 million in fines and penalties. In the DAEWOO case, criminal convictions were obtained on the company and its president and on March 6, 1987, the Government brought suit in the Court of International Trade against DAEWOO in the total amount of $163,065,386.

Our multidisciplined approach, utilizing Import Specialists, Inspectors and Special Agents in closely coordinated efforts, continues to adapt to a changing trade enforcement environment. Since the end of TPM, restraint agreements have been negotiated with individual supplier nations. We now have restraint agreements on steel products with the European community and 16 other countries.

Price manipulations are no longer the primary steel strategy of trade criminals. We now find evidence of transshipment of controlled steel products from countries with which we have negotiated import limits through other countries with which we have not. The latter is then claimed as the country of origin. In future months, we will be seeing criminal and civil prosecutions of those involved in these practices. Additionally, as the Voluntary Restraint Agreements (VRAs)are quantitative restraints, we have found instances where the quantities have been understated on the import documentation. Several seizures have been made as a result of this scheme.

Likewise, in our national textile program we find that the circumvention of the bilateral quota and visa agreements which we have with 49 countries, provide the insidious trader with an ample temptation to cheat through transshipment. The foremost example of this practice is our ongoing series of investigations regarding lightweight polyester fabric (category 612) which was allegedly produced in Korea but shipped as a product of Japan. Working with the U.S. Trade Representative's office, we believe we have recently convinced Japanese authorities of the reality of this scheme and they are now conducting a parallel investigation regarding violations of Japanese export laws. As much as 11 million yards of fabric may be involved and it is our understanding that the Japanese have, last month, arrested a key conspirator.

In textiles, in addition to schemes to avoid our negotiated quota limits, which include misdescription, understated quantities, forged visa documents, etc., we still encounter good, old fashioned tariff evasion. In one such recent case, we have issued a penalty notice in excess of

$150 million to a major distributor of designer jeans, who has, allegedly greatly understated the value of the subject merchandise.

Further, in the area of duty drawback fraud, we are now in the later stages of OPERATION BITTERSWEET. BITTERSWEET, was conceived and initiated in 1984 as a national attack against the widespread practice of filing fraudulent duty drawback claims.

The fraudulent scheme involved importation of foreign raw sugar, by major U.S. refiners, which was refined and then sold to third-party sugar brokers at world prices, to allegedly be exported. The brokers then furnished false ocean bills of lading to the U.S. refiner, as proof of export, for the sugar which had in fact never left the United States. The refiner then submitted the claim with Customs for a 99 percent refund of the duty he had paid on the raw sugar initially imported. The sugar had instead been sold, by the brokers, to domestic users at higher (federally supported prices), allowing the brokers to reap huge illegal profits.

OPERATION BITTERSWEET has been a huge success both civilly and criminally as evidenced by the following statistical results:

Indictments

Corporations - 25
Individuals - 23

Arrests - 37

Convictions

Corporations - 20
Individuals - 20

Fines

Criminal - $383,000

Recoveries (Illegal Profits) - $1,838,232

Negotiated Settlements - $14,545,843

Results of our recent fraud enforcement program are impressive. There has been a noted increase in the number of investigations initiated, finalized and under active investigation. There has been an impressive increase in the number of criminal convictions - 22 in FY 82 and 88 in FY 86.

Likewise, there has been a steady increase in civil recoveries as evidenced by the number and dollar value of penalties and forfeitures issued.

These accomplishments can be seen as a result, in part, of an increased dedication of available resources to our Commercial Fraud Program.

In FY 86, over 182 man years were invested in counter fraud activities - up from 129 man years in FY 85. Our current data for this indicates a further increase in manpower dedicated to commercial importation violations.

It is interesting to note that textile seizures for the first half of FY 87 have surpassed, in value, those for all of FY 86.

I would like to emphasize, however, that the increased statistical "payoff" from our fraud programs are not solely the result of an indiscriminate allocation of personnel. They are also attributable to the better targeting and increased multidisciplined cooperation which is an implicit

CURRENT FRAUD TRENDS

As the United States has sought, increasingly, to regulate imports of sensitive importations through commodity specific, country specific allocations or quotas, the predominant challenge to our commercial fraud enforcement program has become the detection and prosecution of schemes to circumvent these controls. These schemes/problem areas can be briefly summarized as follows:

Transshipment/False Country of Origin:

The United States negotiates quantitative limits with supplier nations with excess capacity to produce sensitive commodities -- to date mostly steel and textiles. Unscrupulous businessmen then import these goods into the United States as products of other countries with which such limits have not been negotiated. Usually, but not always, the subject goods are imported into then exported from the false country of origin.

We believe that these transshipments constitute the single greatest current challenge to our fraud investigations program.

A sophisticated transshipper will provide us with no documentary or physical evidence of the true country of origin of the goods. To prove the fact of transshipment requires investigations in the source country and/or the transshipment country or countries.

Examples of our current or recent efforts in the transshipment area include the Korean polyester cases.

In other investigation, EAGLE EYE LTD., a U.S. corporation, and EAGLE EYE of Hong Kong conspired to import sweaters and other textile articles into the United States falsely marked as Japanese goods, when, in fact, they were from Hong Kong and the People's Republic of China.

In July of 1986, the two companies were convicted of four criminal felonies, four misdemeanors, and were sentenced to criminal fines totalling $40,000. In addition, it was stipulated that all civil penalties assessed by Customs be paid. These total some $384,000.

On December 2, 1986, RYUSHO AMERICA CORPORATION entered into a joint civil/criminal settlement regarding steel pipe manufactured in Thailand but falsely marked to appear as a product of Japan.

The company agreed to pay almost $280,000, which represented all available assets of the importer, which has ceased operations.

Transshipments occur in other types of merchandise as well. On December 12, 1986, MBI INDUSTRIES was found guilty of importing Korean photo albums falsely declared as a product of Taiwan in order to evade antidumping duties. One and one half million dollars in photo albums were seized. In addition, the company pled guilty to one criminal count and was fined $5,000. Civil penalty assessments are contemplated.

Fraudulent Visas and Export Licenses:

The bilateral agreements, by which the United States seeks to control imports of sensitive commodities often include certifications by the the exporting country. These certifications take the form of visas (textiles) or Export Certificates (steel products). In 1983, there developed a problem with forged Taiwanese textile visas. This problem was ultimately solved through implementation of an Automated Visa Verification System (AVVS). We are just now encountering an incidence of allegedly counterfeit People's Republic of China (PRC) textile visas. Presently we have established contact with the Embassy of the Peoples Republic of China to confirm the forged status of the visas, and the Senior Customs Representative, Hong Kong is investigating.

Misdescriptions:

Because our trade controls are commodity specific, as well as country specific, there is a temptation to describe sensitive commodities as non-sensitive commodities in order to circumvent controls. This practice is similar to the venerable fraudulent practice of misdescribing goods to avoid the payment of duties.

In textiles, the fiber content can be falsely stated or the article can be misdescribed to enter it in a more favorable quota/visa category.

One example of this practice is reflected by the criminal settlement in JUST FOR YOU APPAREL LTD., which had been found guilty of misdescribing wearing apparel to avoid tight quota limits as well as undervaluing the merchandise. The company, its corporate secretary and its foreign buyer were found guilty of multiple felonies and paid a total of $45,000 in criminal fines and $11,533.50 in restitution. A demand for duties in excess of $1.5 million has been issued to the corporation and various surety companies. Civil penalty action is still underway.

Another example is the THYSSEN STEEL CORPORATION case in which THYSSEN was found guilty of two felonies and paid a penalty of $3,250,000 regarding the importation of cold rolled steel sheet in which the merchandise had been misdescribed as a lower grade to evade the Trigger Price Mechanism.

Excessive Undeclared Weights and Quantities:

This is a fraudulent method of circumventing quantity restraints while, at the same time, avoiding the payment of lawful duties. We have current ongoing cases relevant to wool hats from Korea and to steel products from several countries in which this practice has apparently been utilized.

Commercial Counterfeiting:

Commercial counterfeiting involves the unauthorized use of trademarks in product identification, or the unauthorized copying of a creative concept. In each case the counterfeiter seeks to benefit from someone else's reputation or creativity. Not only are most counterfeit goods cheaper and inferior to the genuine articles, but they can be produced without much of the overhead advertising, customer relations, quality control - associated with well run, legitimate businesses.

Counterfeiters do, however, often run very sophisticated copying operations. The ability of some of these unscrupulous operators to produce cheap copies of everything from toys to computers is often nothing short of phenomenal.

Here is a list of some of the items in international trade that are often counterfeited:

Clothing
Luggage
Watches
Jewelry
Toys
Perfume
Shampoo and Soap
Video Games
Computer Programs
Computers
Pharmaceuticals

Much, but by no means all, of this counterfeiting is carried on in a few of the Pacific rim countries especially countries that are in the earlier stages of industrial development. It would seem that product piracy has a special appeal to businesses located where manpower is cheap and law enforcement against commercial fraud is lax. Both the governments and the businessmen in more developed nations tend to view counterfeiting more as a threat to their own economies and creative endeavors than as an opportunity to make a fast profit at someone else's expense.

Copyright and trademark violations do not only take place in developing Pacific rim countries, however. Much counterfeit perfume, for example, is produced in Europe or the Middle East. Often the perfume will be produced in one country, the packaging in another, with the final assembly in a third. Then the complete product may be shipped to the United States from still a fourth country, sometimes by way of even a fifth, such as Panama.

We are concerned when generic products are imported legally and then remarked with counterfeit trademarks in this country, as may often be the case with automotive parts. Here the new Trademark Counterfeiting Law of 1984 is especially useful to use as it gives as a basis for criminal prosecution whether or not the items are imported, and whether or not the trademark owner has recorded his mark with us. In such cases we often work closely with FBI agents and other federal and local law enforcement officers.

Certainly, these are in no way victimless crimes. The producers and sellers of the legitimate products can have their reputations with consumers seriously damaged, as well as having competitors benefit unfairly from the investments in advertising, warranties, customer service and other overhead associated with marketing the genuine product.

Consumers are also often victimized by the counterfeiters, sometimes in serious life threatening ways. Counterfeit automobile and aircraft parts are notable here as are certain pharmaceuticals such as birth control pills with no effect or undesirable and unexpected side effects. Even perfumes and cosmetics can be a problem as there is no guarantee on the safety of the components in the counterfeit products. The consumer often suffers financially as well by paying top dollar for an inferior product.

It is difficult to know the actual size and extent of the piracy problem. As with drugs, we know what we are stopping, but it is difficult to get an accurate estimate of what we are missing. In fiscal year 1986 Customs seized over $40 million (domestic value) worth of counterfeit merchandise from 25 countries. It is certainly reasonable to assume that the total value of counterfeits shipped into the United States is substantially larger, possibly totalling hundreds of millions of dollars a year, and resulting in millions more in lost profits and jobs for the American economy.

SAFETY/HEALTH RELATED IMPORTATIONS

The Customs Service continues to find evidence that numerous commodities are smuggled or frauduently entered into the commerce of the United States which affect the health and safety of the American Public. Many items when used in commercial or industrial applications create the potential for disaster. For example, the American industry has standardized markings on metal fasteners such as nuts and bolts to denote hardness and strength. We have developed evidence that some imported metal fasteners bearing these markings do not meet the industry standards and are of inferior quality. These low grade fasteners have multiple uses in industrial applications such as bridges, aircraft, and nuclear power plants. Currently there are numerous active investigations concerning the importations of such fasteners.

The automobile parts industry is also affected by imported items. Industry sources have informed us that counterfeit automobile parts continue to be sold on the domestic market. Estimates of counterfeit parts suggest 50% are manufactured domestically while the remainder are of foreign manufacture but are imported without markings and subsequently remarked and packaged with counterfeit markings. Other industry estimates indicate approximately 60% of the counterfeit parts are consummed domestically while the other 40% are exported for consumption. In a recent case, Columbus Auto Parts, the company and three executive officers were indicted in connection with the importation and remarking of foreign manufactured front end suspension parts. The company imported over $2 million in parts from Japan and had the parts repackaged in boxes marked "Made in USA". Approximately 95% of the parts were exported to Mexico.

Importation of contaminated foodstuffs or foodstuffs unfit for human consumption has also been a target of our enforcement efforts. In Puerto Rico the President of Taneat Transport, Inc. was arrested and convicted on charges stemming from his efforts to smuggle 10,338 pounds of spoiled pork shoulder picnic hams. In San Francisco, Raymond Hoy-Ping CHAN who operated Golden Force Company was convicted in connection with his failure to export contaminated foodstuffs. The foodstuffs were imported from Hong Kong but were rejected by the US Food and Drug Administration. CHAN was ordered to export the foodstuffs but substitued other merchandise. Some of the contaminated foods were distributed to retail outlets. In other current investigations imported foodstuffs were found to be contaminated by insects, rodent hairs and excrement or other foreign matter.

Several investigations are actively being pursued concerning the importation of prohibited, unapproved and misbranded pharmacutical drugs and medicines. Inn Joo Son operated a business known as Sin Sea Gea Travel and Trading. Son illegally imported and distributed prohibited Chinese medicines. In 1983 it was determined that Son supplied medicine which resulted in at least one death. Son was arrested and convicted as a result of his activities. We continue to see many other types of pharmaceuticals and health and beauty aides which have been found to contain substances which cause illness or injury. In 1985 a container of counterfeit Johnson & Johnson "No More Tears" Baby Shampoo was seized in Philadelphia. Counterfeit items of this type have been found to contain eye and skin irritants and in some cases have caused permanent damage to infants.

The Customs Service enforces the Switchblade Knife Act as it relates to importations. Annually several thousand switchblade knives are seized while being smuggled or fraudulently entered into the United States. In a current investigation over 30,000 switchblade knives were seized from one importer who falsely mainfested the knives on the entry.

Removal of Country of Origin Markings:

This illegal practice has apparently been exacerbated by recent increases in the "buy America" consciousness by the American consumer. We have completed many investigations in this area with some very impressive results.

In Houston, Texas, for instance, our local field office, has completed 3 of 12 such investigations regarding the removal of foreign country of origin markings on steel flanges and fittings. These firms, MASS FLANGES CORPORATION, J&R METALS, and APEX VALVE & FITTING INC. have been convicted of criminal misdemeanor violations, paid criminal fines of $15,000, and/or civil penalties of $1,508,577.

In an investigation regarding similar merchandise in Seattle, imported by, FAMILIAN NORWEST INC., convictions were obtained on the company, a branch manager, and assistant manager. The company paid $5,000 in criminal fines and $195,000 in civil penalties. The individuals were fined $25,000 and $5,000 respectively.

DISTRICT FRAUD TEAMS

Our multidisiplined District Fraud Teams are comprised of Special Agents/Criminal Investigators, Import Specialists, Inspectors, and Regulatory Auditors. The Teams, working in conjunction with our Customs Laboratories, have proven to be a most effective method to maximize internal communication and to expedite the conversion of quality referrals into successful investigations. We intend to continue to utilize this proven tool in our fraud investigations program.

OVERSEAS OFFICES

Our foreign offices, as in the past, but even more so now, are one of our major weapons to combat Trade Fraud. I have previously specifically mentioned to you various Trade Fraud problems. Most of these problems necessitate investigations by our Attaches. However, TRANSSHIPMENT, FALSE VISA, and FALSE EXPORT LICENSE violations in particular, must have foreign investigations to be successfully completed. TRANSSHIPMENT violations for example, require a tremendous amount of manhours to complete, because the evidence to prove the violation is only to be found in the multiple countries through which the merchandise passes on its way to the United States.

The increase in these priority investigations can place a heavy burden on our foreign offices. We are constantly monitoring this, and I will request additional positions for these offices or suppliment their staffing with temporary assignments of personnel from our domestic field offices.

CUSTOMS FRAUD INVESTIGATIONS CENTER

The Customs Fraud Investigations Center (CFIC) is a unified interdisciplinary approach to combatting Trade Fraud perpetrated by importers of foreign merchandise into the commerce of the United States.

The CFIC is staffed with senior Customs personnel including special agents, import specialists, inspectors, and related support personnel who are co-located in office space at Customs Headquarters. CFIC objectives include but are not limited to the following:

- o Monitor active investigations that are being conducted by our domestic and foreign offices.
- o Liason with Congress, other Federal agencies, and trade/industry associations.
- o Detect developing trends in Trade Fraud and design programs that will halt those trends.
- o Keep the field advised as to current trade programs, legal rulings/opinions which effect investigative efforts.
- o Conduct Trade Fraud training for Customs domestic and foreign personnel.
- o Ensure selective employment of investigative resources to maximize deterrent results in terms of criminal and civil sanctions and penalties.

Customs will continue, Mr. Chairman, to make its Commercial Fraud Enforcement efforts a high priority. Smarter use of Customs personnel and new automated systems is making life much more difficult for unscrupulous importers. You can be assured that during the remainder of my tenure as Commissioner of Customs this positive trend will continue.

IATA

International Air Transport Association

PROF. DR. GÜNTER O. ESER
DIRECTOR GENERAL

MONTREAL / GENEVA

15th May 1987

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington D.C. 20515
U.S.A.

Dear Mr. Gibbons,

On May 12, your Committee held hearings on the management of the U.S. Customs Service. On behalf of the 158 international airline members of the International Air Transport Association (IATA) from all areas of the world, I am submitting the following statement for the record on this matter.

We are deeply concerned over the proposed cutback in U.S. Customs Service personnel in the budget proposal for FY 1988. This proposal calls into serious question whether the user fees which the Congress enacted last year on air travel are being used for the purposes that the Congress mandated. As you know, IATA then opposed, and still opposes, user fees intended to fund government activities which benefit the public in general rather than air travelers as such. However, the impact of these user fees was lessened when the Congress provided that, in return for payment of the $5 Customs user fee, airline passengers would receive fully adequate Customs services whenever needed. The Consolidated Omnibus Budget Reconciliation Act of 1986 also provided that "all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriations Acts, for the salaries and expenses of the United States Customs Services incurred in conducting commercial operations". The proposed cutback in Customs personnel is directly contrary to these clear expressions of Congressional intent.

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MONTREAL (Head Office) - 2000 Peel Street
Montreal, P.Q., Canada H3A 2R4
Telephone: (514) 844-6311
Cables: IATA Montreal Telex: 5267627

GENEVA - 26, chemin de Joinville
B.P. 160, 1216 Cointrin-Geneva, Switzerland
Telephone: (022) 98 33 66
Cables: IATA Geneva Telex: 23 391

Moreover, the proposed Customs budget undermines the only redeeming feature of user fees, namely, that the funds collected will be used to maintain and improve services to travelers and shippers. Without this feature, I am certain that opposition to user fees will only grow not only from the airline industry and the public but from foreign governments as well. The latter may be tempted to impose similarly-structured fees or taxes in retaliation.

I might also point out that, because the proposed substantial cutback in Customs personnel will significantly impair the ability of the U.S. Customs Service to clear incoming passengers and cargo without excessive and costly delays, it could impact adversely on U.S. imports and on the willingness of foreign travelers to include the United States in their travels, both of which are important elements in the U.S. balance of payments.

We urge that the House Ways and Means Committee take steps to restore funding for a fully adequate level of U.S. Customs Service personnel.

If we can provide any other information, please let me know.

Yours sincerely,

Statement of the National Association of Foreign-Trade Zones Concerning the FY 1988 Budget Authorization for the United States Customs Service

The National Association of Foreign-Trade Zones (NAFTZ) represents the majority of foreign-trade zones and subzones in the United States and is the national voice for the foreign-trade zones program. Auditing and inspecting the operations in foreign-trade zones is the responsibility of the U.S. Customs Service.

As the Subcommittee knows, the Administration is proposing a 13% reduction in funding for the operations of the U.S. Customs Service, down from the $901.5 million appropriated by Congress in FY 87 to $876.0 million in FY 1988. The budget proposes reducing the number of Customs employees from the 15,000 positions authorized by Congress for FY 87 to 13,000. The bulk of these cuts will come from commercial operations and enforcement positions.

At a time when the responsibilities of the U.S. Customs Service are expanding, the need for Customs personnel is greater, not less. Importers who are foreign-trade zones users and the industry in general oppose these reductions.

Therefore, the National Association of Foreign-Trade Zones, urges the Trade Subcommittee and the full Ways and Means Committee to reject the Administration's proposed reductions and approve a budget authorization for FY 1988 at least equal to that provided for FY 87.

In a related matter, the NAFTZ wishes to advise the Subcommittee of its strong support for H.R. 2338, introduced by Rep. Don Bonker, and referred to the Committee on Ways and Means. This legislation would prohibit the Customs Service from imposing and collecting the activation and annual foreign-trade zone fee during the time when a Customs user fee, such as that authorized by the Omnibus Budget Reconcillation Act 1986, is in effect. To allow imposition of both fees on foreign-trade zones, in the NAFTZ's view, is inequitable and amounts to "double taxation."

The NAFTZ's analysis of the statutory language and legislative history surrounding the user fee provisions (see the attached memorandum) leads to the conclusion that the user fee replaces the annual FTZ fee assessed by Customs for audit and inspection activities. H.R. 2338 would clarify what the NAFTZ believes to be Congressional intent that the user fee in fact replaces the FTZ activation and annual fee. Accordingly, the NAFTZ strongly urges prompt enactment of this legislation.

Thank you for the opportunity to provide the NAFTZ views on these matters.

Memorandum

Re: Effect of Customs Merchandise User Fee on Foreign-Trade Zone Activation and Annual Fees Imposed Under 19 C.F.R. Part 146

The Budget Reconciliation Act of 1986 added a merchandise user fee intended to cover the costs of the commercial operations of the Customs Service. The merchandise user fee replaces several types of fees and charges previously imposed by Customs, including the foreign-trade zone activation fee and annual fee imposed under 19 C.F.R. Part 146. This memorandum states the reasons for that conclusion.

I. The Merchandise User Fee Replaces the Foreign-Trade Zone Annual and Activation Fees.

A. The merchandise user fee or import fee was added by Section 8101 of the Budget Reconciliation Act of 1986, P.L. 99-509. Section 8101 imposes a user fee on formal Customs entries and withdrawals from warehouse for consumption of 0.22 percent, effective December 1, 1986. This will decrease to 0.17 percent, effective October 1, 1987.

B. Section 8101 also provides that the import fee displaces any charges for cargo inspection, clearance or service, in connection with "arrival or departure of any...cargo, in the United States."

C. The fee applies to formal entries, or withdrawals from warehouse, for consumption. Therefore, consumption entries of merchandise leaving foreign-trade zones and entering U.S. commerce would be subject to the fee. We estimate that the user fee will generate some $10 million in new revenue from zone withdrawals alone. This is far in excess of the approximately $1 million raised by the Customs foreign-trade zone fees.

D. Section 8101(c) provides that no charges other than fees authorized by the Comprehensive Budget Reconciliation Act of 1985, as amended, § 1303(a), may be collected for "any... customs service performed...in connection with the arrival or departure of...cargo, in the United States," "[n]otwithstanding any other provision of law."

E. The Customs fees currently charged for activation and annual operation of zones are designed to cover costs of

Customs' commercial operations relating to foreign-trade zones (primarily audits and spot inspections). Audits and spot inspections of zone operations are in connection with "arrival or departure...of...cargo in the United States."

F. The foreign-trade zone annual and activation fees are not preserved by statutory language which provides for a reduction in the import fee by the Secretary of the Treasury (Section 13031(b)(9)) in cases where services are provided at certain facilities and Customs costs are reimbursed under 31 U.S.C. § 9701, or 19 U.S.C. § 586.

1. The annual fee is not by 31 U.S.C. § 9701 or 19 U.S.C. § 586. This is confirmed by the Customs regulation imposing the annual fee, 19 C.F.R. § 146.5, which asserts only 19 C.F.R. § 81n as statutory authority.

2. The activation fee is imposed under 31 U.S.C. § 9701, but is nevertheless connected with the arrival of cargo, and therefore may not be collected. If able to be collected, the amount of the activation fee should reduce the import user fee.

G. Therefore, Customs is precluded from assessing the foreign-trade zone activation fee or annual fee while the import user fee is in effect (December 1, 1986-September 30, 1989).

II. **This Result is Manifestly Fair and Equitable.**

The replacement of the zone activation and annual fee is fair to zone operators and users, as well as the Customs Service, because:

A. Zone users will pay import user fees far in excess of the Customs activation and annual fees for foreign-trade zones;

B. The import user fee will cover costs of administration of foreign-trade zones, as well as other commercial operations; and

C. Zone users and operators will not be charged twice for the same Customs services.

III. **This Result is Consistent with Congressional Intent.**

A. Congress clearly intended to replace previously existing fees, connected with cargo processing with the import fee. The replacement even extends to Customs charges for overtime. Clearly, if extraordinary fees for overtime are replaced, fees covering merely normal commercial operations (such as Customs audits of foreign-trade zones) were also intended to be replaced; and

B. The import fee may be held to be consistent with the General Agreement on Tariffs and Trade only if it is limited to recovery of operational expenses of the Customs Service. Customs' costs of audits and inspections of foreign-trade zones will not count toward those operational expenses unless the Customs foreign-trade zone fees are discontinued. Failure to count such expenses would make it less likely that the import fee could be sustained under GATT.

STATEMENT OF
NATIONAL RETAIL MERCHANTS ASSOCIATION
ON THE OPERATIONS OF THE U.S. CUSTOMS SERVICE

This statement represents the views of the National Retail Merchants Association ("NRMA") on the operations of the U.S. Customs Service.

The NRMA is a non-profit voluntary trade association whose approximately 3,700 members operate more than 40,000 department, chain, and specialty stores throughout the United States. NRMA's members import a wide variety of merchandise, and so have an immediate and strong interest in the fair and efficient processing of their entries by the U.S. Customs Service. NRMA members have experienced first-hand how Customs' commercial importation processing operations have deteriorated in recent years to the point where importing is a struggle and a risk for even large, reputable companies. This unacceptable situation led to the establishment early this year of a Special Customs Task Force in NRMA's Foreign Trade Committee to attempt to help NRMA members deal with Customs problems. One of the first things that the Task Force did was to canvass our members for their observations on how Customs is handling commercial importations. The information and case histories presented in this statement have been collected from NRMA's member firms. They illustrate, quite graphically, many of the difficulties which NRMA members are encountering with Customs.

More important, these illustrations point out three critical areas where Congress needs to improve Customs Service operations: (1) the adversarial relationship between Customs and importers and retailers; (2) day-to-day Customs operations; and (3) the procedures by which Customs makes rulings.

I. THE CUSTOMS FUNCTION: ENFORCEMENT VS. SERVICE

The Customs Service has twin obligations. On the one hand, Customs must enforce the Nation's trade laws. It must make sure that importers do not attempt to circumvent quotas, or defraud the government of tariff revenue, or otherwise violate U.S. laws or international trading obligations. Moreover, Customs is charged with the responsibility for cracking down on illegal drug traffic.

But at the same time, Customs also has the obligation to make sure that the legitimate flow of international commerce is not impeded. In this sense, the Customs Service should provide fast and efficient processing of commercial entries. These entries are important to U.S. businesses, not only to U.S. retailers who sell a variety of merchandise to U.S. consumers, but to manufacturers who rely on component parts for manufacturing operations.

Unfortunately, in recent years the Customs Service has measured its success as an agency of the U.S. Government, not by how efficiently it processes commercial entries, but by how many fraud cases it initiates and by the amount of drugs that it interdicts at the border. This overriding emphasis on police-type enforcement is obvious in Customs' recent annual reports, which are devoted almost exclusively to this aspect of its responsibilities. The result has been the erosion of the relationship between the importing public and the Customs Service. Today, retailers and importers have come to believe that the Customs Service is, somehow, "out to get them." While at the same time, many Customs Service employees have begun to lose the distinction between illegitimate importers and drug runners, on the one hand, and the overwhelming majority of importers who are legitimate and law abiding, on the other hand. This adversarial relationship exacerbates the difficulties that are caused by tight budgets and lack of personnel. Unfortunately, there is every reason to believe that this state of affairs will continue unless checked by Congress.

The Customs Services' "Rambo" approach towards importers in general was illuminated, for example, in its December 10, 1986, proposal to amend its enforcement guidelines under Section 592 of the Tariff Act of 1930 to remove the requirement that a "fraudulent" violation of Section 592 be deliberately done with intent to defraud the revenue or otherwise violate U.S. law. Customs has attempted to justify this expanded and unprecedented concept of fraud on the qrounds that the current standard definition "imposes a burden of proof that is greater that is necessary for establishing civil fraud under Section 592," and would "impair the enforcement of Section 592 fraud cases."

This sweeping change would eliminate the carefully crafted distinctions set up by Congress in 1978 between fraud and the lesser offense of "gross negligence." If approved, this change in Customs practice would result in many more enforcement actions against individuals who possibly had made serious mistakes, but who had never intended to commit fraud. NRMA was delighted to see that this Committee, in its report on H.R. 3, sharply criticized Customs for attempting to redefine "fraud" in this manner, and we hope that Customs will take the hint and abandon its proposal.

Another, more recent and flagrant example: In the Anti-Drug Abuse Act of 1986 Congress granted Customs the authority to seize and forfeit merchandise imported "contrary to law." The legislative history of this provision shows that this authority was targeted at clearly prohibited importations. On March 27, 1987, however, Customs issued internal enforcement guidelines in which it instructed field officers to use this new authority to seize and forfeit any imported merchandise that is even slightly out of compliance with the requirements of any U.S. law that Customs administers. NRMA members have already begun to suffer extreme consequences from a new wave of Customs seizures. For example, one NRMA member reported to our Customs Task Force that Customs seized and is seeking forfeiture of a shipment of perfectly legitimate swimsuits, visaed in the correct quota category, because the shipment was not correctly weighed, and so the visa covers about 75 lbs. less than the actual weight of the shipment. This sort of minor discrepancy is almost impossible to avoid in the area of textiles and apparel, and importers usually are able to obtain a corrected export license or a quota waiver from the government of the exporting country. It appears, however, that from now on Customs will not let importers correct these types of mistakes, but instead will seize and seek to forfeit the entire shipment, potentially costing the importer the entire value of the shipment.

In effect, Customs is using its new authority to seize and forfeit importations "contrary to law" to resurrect the draconian civil penalty statute which Congress scrapped in 1978, under which Customs could seize and forfeit imported merchandise for even the most minor violation of the Customs laws. The horror of this situation is that the importer, in addition to potentially losing the value of the goods themselves, remains subject to the further assessment of civil penalties or liquidated damages for the same infraction. Perhaps without realizing it, Congress has given Customs the means to effectively double or multiply the importer's liability for many types of common errors in custom entry. If there was ever a situation in which Congress should step in and tell Customs to make the punishment fit the crime, this is it.

Finally, the House of Representatives has included a "scofflaw" provision in H.R. 3, that would suspend an importer's right to import merchandise for a three-year period if three "fraud" penalties or criminal convictions under the custom laws are returned against it within a seven-year period. While NRMA commends the Committee for having the wisdom to remove some of the most egregious features from this proposal in its original form -- particularly its coverage of Customs penalties involving merely "gross negligence" -- the proposal still places legitimate importers at serious risk of losing their business not for being true "scofflaws" but by happenstance and technicality. For example, there is nothing in the present scofflaw proposal to make it clear that the three fraud penalties or criminal convictions must be for three independent incidents; all the bill says in "three separate violations." Does this mean that if an importer's agent without authorization, falsifies import documents in order to gain entry for a shipment, the importer could be assessed a fraud penalty under Section 592, and convicted of criminal violations of 18 U.S.C. § 542 and 1001, all for the same incident -- and automatically be put out of business as a 'multiple Customs offender?" Also, does "three separate violations" mean three separate counts in a criminal action involving one statute -- which a prosecutor could create from three separate entries made with the same falsification. Moreover, what does a violation "finally determined" to involve fraud or criminal culpability mean? Bear in mind that the Customs Service -- an agency with an adversarial relationship with importers, that views its primary mission as enforcement -- make a final administrative determination that conduct is "fraud," and only very lengthy, expensive litigation can dislodge Customs' declaration. NRMA submits that "finally determined" can only mean that judicial as well as administrative remedies will be exhausted. Finally, the import ban would go into effect automatically, with no right even for an additional hearing. In short, there are still issues and problems in the Customs scofflaw proposal that need to be clarified or corrected before legitimate importers such as NRMA members can be comfortable that they will not be "betting the company" every time they enter merchandise into the United States.

Based on these current Customs actions and the scofflaw proposal, NRMA urges Congress to reevaluate Customs' over-emphasis on enforcement and the increased blurring of the distinction between the majority of legitimate importers and the few who flaunt the rules. Enforcement is important, but the efficient handling of international cargo benefits the United States economy, and legitimate importers are deserving of some measure of fairness and reasonableness from Customs.

What is particularly galling to the importing public is that we are now paying for these enforcement activities through the 0.22 percent Customs User Fee. While this fee was originally designed to decrease and phase out by the end of Fiscal Year 1989, the President's budget proposal intends to make this fee a permanent fixture and to maintain it at 0.22 percent instead of dropping the rate to 0.17 percent as originally intended.

NRMA opposes any retention of the importer's user fee, in any form, that does not dedicate the funds to improving the processing and clearance of the very commercial importations which generate the fee. In short, if importers are to pay for the processing of their merchandise through Customs, then they deserve a fair exchange for their money. Right now, retailers are simply not getting a very good deal.

II. IMPROVING DAY-TO-DAY CUSTOMS OPERATIONS

In recent years, Congress has successfully resisted Administration attempts to cut the Customs budget, and has appropriated additional Customs funding and personnel positions. Also, Customs now enjoys the proceeds from a variety of user fees -- principally, the 0.22% fee imposed directly on the value of foreign imports -- to fund its commercial operations. Looking at these facts alone, one would think that Customs has ample resources and personnel to perform all of its assigned tasks. That is far from the truth, however, because most of the increased resources provided to Customs in the past several years have been employed in drug interdiction and fraud investigation activities. The normal processing of commercial entries -the primary task of the Customs Service -- has lagged behind to such an extent that NRMA members are experiencing chronic difficulties and delays in clearing their merchandise through Customs. Delays in Customs entry review, inspection, and clearance regularly run into days, and often stretch into weeks. The direct consequences are substantial costs to NRMA members for storage charges, transportation charges, and Customs overtime charges -- which some of our members tell us they pay as a matter of course because they have found it to be the only way to get their merchandise on a timely basis. Yet, the greatest damage which our members suffer as a consequence of Customs delays in entry processing is in the form of lost or reduced value of their merchandise, for in retailing, perhaps more than in any other economic activity, on-time delivery is essential and delayed goods lose value.

Reviewing Entry Papers. One bottleneck in the processing of commercial entries is the entry review process, which is particularly important when apparel is involved because the merchandise is governed by quotas and cannot be released until the import specialist team has reviewed and approved the entry papers. Our members report that entry papers usually take days to clear the Customs team, during which the goods cannot be delivered to their stores. One member reported an incident in which entry papers were sent to the wrong review team, yet were still held there for ten days. Believing that the entry papers had been lost, the importer filed a duplicate entry, which was cleared by the correct team. When the original entry was reviewed and referred to the correct team, the importer received a rejection notice and was ordered to hold the goods! The matter was straightened out only after the Customs team realized that it had already approved the entry using the duplicate entry papers. Our information is that Customs import teams take, on average, *five days* to review and process apparel entry papers. Even worse, Customs has requested, without prior warning, samples of merchandise as long as 2 months after the entry, by which time the goods have likely been sold and samples discarded. NRMA suggests that 48 hours should be absolute limit on the amount of time that this clearance should take.

Physical Inspection. Once the import specialist team has cleared the entry papers, whether for apparel or non-apparel items, that does not necessarily mean that the importer can get his merchandise. Customs has steadily intensified its physical inspection of merchandise to verify descriptions, weights, quantities and markings -- and also to see if any drugs are being smuggled in. Merchandise inspection has become the single most difficult hurdle for our members to overcome. Customs in recent years has all but eliminated inspection of merchandise on importer's premises, and now requires that merchandise selected for inspection be transported to Customs facilities -- at the importer's expense. Furthermore, Customs has created bottlenecks by increasingly centralizing its inspections; when centralized inspection was introduced in Chicago in 1986, for example, the number of inspection sites was reduced from 44 to four.

Shortage of Personnel. The problems with Customs inspection only begin with centralization. There is a nationwide shortage of inspectors, particularly in the West Coast ports. The delays caused by the unavailability of inspection teams to examine the increasing amount of merchandise selected for inspection can reach staggering proportions. The most egregious example reported to NRMA's Special Customs Task Force involved the textile inspection team in Los Angeles. At one point in time, the chief of that team was on jury duty, his assistant was ill, and another member of the team was on annual leave. The result -- no selected textile and apparel shipments were inspected, and therefore none were released, for eight days. With all due respect to the Customs Service, importers should not have to face this sort of obstacle in order to receive their goods.

Lost Paperwork. As if inspection delays were not bad enough, NRMA's members report that Customs inspection teams often fail to notify importers that their goods have been selected for inspection, or when they are to be examined. We know that this is true in Los Angeles; in Chicago, in contrast, importers *are* notified of pending inspections. (In this connection, it bears mentioning that different ports have very different notions about how many entries to inspect. On average, Los Angeles inspects 10% of all textile imports; in Houston, about 90% are inspected, which makes for a one-to-two week delay in releases of these entries and a substantial container inspection charge that must be paid to Customs). Importers can easily lose track of their goods, and entry documents needed for release of the that Customs in New York has lost its entry release documents on three separate occasions in the past two months; the importer had to submit duplicate release papers and incurred additional transportation and storage charges and 7-10 day delays in the release of its goods.

We also know of an incident in Los Angeles where an inspection team held an entry for so long that the importer assumed that the papers were lost and filed a duplicate entry. This entry was cleared by the import specialist team and, somewhat surprisingly, released without inspection.

Afterwards, the inspection team showed up to examine the goods under the original entry papers, and accused the importer of disposing of the goods without proper authorization.

Another member told us of an incident where the company was instructed to move certain cargo to a centralized inspection site in the Port of Los Angeles to be inspected on a particular day. When the goods arrived at the inspection site, the importer discovered that the inspectors who were supposed to examine the goods were all at Los Angeles Airport examining other merchandise. The goods had to be returned to the importer's premises to await another inspection date - all at the importer's expense.

Inexperienced Personnel. Complicating the shortage of both entry processing and inspection personnel has been their inexperience and lack of knowledge, which appears to come about mainly because Customs reassigns import specialists and inspectors to new commodities just as they have become qualified to deal in the old ones. These reassigned Customs officers gain their experience and education at the expense of the importer in terms of needless confusion and error. An example which a member reported to our Customs Task Force involved a Customs Special Investigation Agent who would automatically treat any apparel entry bearing an export visa from Nepal as an illegal transshipment, because he had a preconceived (and erroneous) notion that there was no apparel production in Nepal.

More Automation. The increasing use of automation in the filing of entries and the selection of shipments for inspection has not alleviated problems. Indeed, Customs automation is part of the problem. For example, we understand that one reason why there is a shortage of commodity inspectors in Los Angeles is that many inspectors have been assigned to keyboard entry information into computer programs which select textile entries to be examined, when they should be in the field examining the merchandise themselves. In the textile quota area, Customs is still not entirely automated. Quota entry review and the determination of quota priority and status are still being done entirely on paper, causing critical delays when quota categories are about to embargo.

Binding Rulings. Customs now takes many months, and often over a year, to issue a binding ruling on the classification, valuation or marking treatment of prospective importations. Without these rulings in hand, importers must enter into transactions without any assurance of how Customs will treat the importations. And even when an importer receives a binding ruling in a timely fashion, Customs field officers sometimes ignore their obligation to abide by the ruling. For example, one of our members went to the trouble and expense of seeking and receiving a binding ruling from Customs that a certain style of camisole was classifiable as underwear. Yet, when the first shipment reached the port, the import specialist classified the camisole as a shirt - even though the binding ruling was attached to the entry documents.

Informal Guidance. Our members also report to us that Customs field officers are now very reluctant to advise importers even informally on basic questions of Customs law. For example, many ports now restrict the hours during which importers may call or visit import specialists with questions, or even with problems in tracing or clearing entries.

One member reported to our Customs Task Force that import specialists in Los Angeles appear to take their telephones off the hook during permitted calling hours, and so are effectively inaccessible. Another member reported that it received informal guidance from a member of an import team on a marking issue, which was overruled by the import specialist. The distressing aspect of the incident, however, was that the team member who gave the advice was admonished by the import specialist not for giving the wrong answer but for giving any guidance to the importer at all. That team member now conscientiously avoids answering any questions from importers. Finally, at New York's J.F. Kennedy Airport recently, Customs created a "duty import specialist" to screen all classification and value inquiries from importers and to funnel importers' responses to Customs' requests for samples, notices of action, marketing certifications, missing documents, etc. This further insulates the Customs import teams from the importers who are directly affected by their actions, and effectively prevents importers from establishing any degree of personal rapport with them. Significantly, Customs set up trays for the duty import specialist to receive papers but did not provide any telephone number, which effectively limits importers to making hand-delivered, written inquiries.

To summarize: The quality of Customs services to mainstream American importers is low and declining. NRMA believes that Congress can help bring about needed improvements in Customs commercial operations by taking the following actions:

1. Increase the number of Customs inspectors for commercial operations;

2. Improve training of Customs Service personnel, and by making sure that reassignment of Customs personnel be done on a staggered basis so that a consistent level of expertise and experience can be maintained;

3. Direct Customs to fully automate textile and apparel quota monitoring and to make certain that the textile program fully interfaces with other Customs Service computer programs;

4. Increase the ability of the Customs Service to provide retailers and importers with binding rulings as well as informal advice, and create a system whereby Customs field officers are required to abide by these rulings; and

5. Consider developing a program to promote internal compliance with Customs laws through a program of Customs-approved internal compliance measures. These measures could be enforced by random Customs audits. Importers and retailers that receive approval of their programs by Customs would benefit in terms of speed of entry for goods, acceptance of independent laboratory tests for fiber content or other factors, and a general presumption of the accuracy of documentation. A separation of the legal commerce and drug enforcement activities of Customs would, once again, be necessary to foster the cooperative spirit required for this program.

III. CUSTOMS MUST RESTORE ITS IMPORTER ADVISORY FUNCTIONS AND INVOLVE IMPORTERS IN THE FORMULATION OF NEW POLICIES

Apart from the sorry state of services to commercial imports, Customs has also been remiss by not providing importers with fair notice or opportunity to comment on new policies, practices and requirements. Instead, many of these new rules have been communicated directly to Customs field offices by telex, and affected importers find out about them only when their shipments are suddenly withheld from delivery. NRMA considers this "regulation by telex" to be a very serious deficiency in Customs operations.

A few of the more egregious examples of "regulations by telex" and similar cases in which Customs failed to seek the advice of importers before acting (apart from the horrible March 27, 1987 seizure guidelines discussed above) are as follows:

(a) Declaration of Quota Charges. On May 12, 1986, Customs issued telex instructions to the field to immediately require that all imports of textile and apparel subject to quota include a declaration of the amount paid for quota "rights" (or licenses) and to whom the payment was made. Importers first found out about this requirement when several ports began to reject entry papers for lack of the declaration. Eventually, the telex instructions for these declarations were made available to the public, and importers readily detected numerous problems with them. On June 23, Customs clarified the quota charge declaration requirement (again, by telex) by providing sample declarations and by making it clear that entries were not to be held up if the declarations were missing. In the interim, however, millions of dollars worth of merchandise had been delayed in Customs clearance, and severe economic losses were inflicted on importers.

(b) "Live" Entry Of Samples. On January 9, 1986, Customs issued a telex directive (No. 3500-06) which provided that as of February 1, 1986: (a) all commercial shipments of textile and apparel would be subject to formal entry procedures, even including samples valued at less than $250 which at the time could use informal entry procedures; and (b) all commercial shipments of textiles and apparel from quota countries, even if not subject to quota restraints, would be subject to "live" entry procedures (which require withholding the goods until the entry is accepted). The impetus for these new rules was general concern about evasion of quota controls. No advance notice of these rules was given, and affected importers had no chance to comment before they were announced. The difficulties in enforcing these rules, and especially their devastating effect on retailers who need timely delivery of merchandise and samples, were quickly and forcefully pointed out to Customs, and on February 28 a new directive was issued (again, by telex) to fix most of the problems.

(c) High-Low Shipments. In the Federal Register of March 6, 1986, Customs announced that, as of May 5, 1986, it would no longer accept textile and apparel entries if the entered value differed from the invoice price. This new rule was aimed at stopping so-called "high-low" shipments, in which a foreign shipper uses an artificially high invoice price to obtain free quota in the country of exportation, while the importer correctly declares the actual price paid or payable to Customs as dutiable value. Initially, however, Customs applied the rule to also reject "triangle shipments," which are legitimate entries of textile goods produced in one country that were sold in another country for export to the United States. After this problem was pointed out to Customs, clarifying instructions were sent to the field, but in the interim numerous triangle shipments that should have passed through Customs without incident were embargoed, at substantial economic cost to importers. Indeed, one of NRMA's members recently had two of its triangle shipments rejected by Customs in the New York area as prohibited "high-low" entries, even after this problem had supposedly been resolved.

(d) Manufacturer's Code On Form 3461. Most recently, Customs issued telex instructions to the field to require importers to include on entry/release forms (Form 3461) a letter/number code to identify the manufacturer or vendor of the imported merchandise, the purpose being to use the Automated Commercial System to target merchandise for inspection. While identifying potential customs law violators is a fair objective and one which retailers support, the code developed by Customs requires importers to translate the manufacturer's name and address into a complex anagram. Customs never consulted with importers on the best way in which to gather data on foreign vendors, and the system that Customs devised on its own is confusing and could result in two manufacturers having the same number. Initially, Customs' instructions were that entry documents in which the code was missing or incorrect were to be rejected; however, perhaps learning from earlier episodes, Customs later decided not to reject such entries, but instead not to process them for selective examination -- which suggests that they may be subjected to more intensive examination than otherwise would be called for. Moreover, we suspect that in the future Customs will begin to reject entries without the code.

The disturbing pattern which emerges from these incidents is that Customs sees nothing wrong with promulgating new rules and requirements in private, and letting importers in on the secret only after the fact. As a consequence, perfectly lawful and admissible shipments overnight become in danger of being held by Customs, and commercial arrangements and delivery schedules are severely disrupted. Also, these new requirements are not enforced uniformly in the ports, making the admissibility of the affected merchandise a matter of chance. (For example, with respect to the case, mentioned earlier in this statement, in which Customs is proceeding to seize and forfeit an NRMA member's shipment of swimwear for a discrepancy in the declared weight, another NRMA member has encountered the identical problem in another port, but there Customs is proceeding with a civil penalty claim without seizing the merchandise.) Finally, deficiencies and oversights in these unilaterally imposed rules are remedied, if at all, only after the fact, causing expense and economic loss that could have been avoided by advance consultations with the importing community.

At the same time that Customs practices "regulations by telex," it has all but eliminated the most efficient way to disseminate new rulings and decisions to importers - publication in the Customs Bulletin. In 1979, Customs published 475 individual decisions in the Bulletin, and as late as 1981 published almost 250 rulings in this manner. By

1983-1984, however, the number of Customs Bulletin rulings had fallen off to barely over 100, and last year, 1986, Customs published a grand total of 29 decisions in the Customs Bulletin. To make matters worse, Customs used to publish in the Customs Bulletin lists of unpublished rulings with brief subject-matter descriptions, which interested importers could obtain for the asking. We do not believe that Customs published even one such list in the Bulletin during 1986.

The points to be made here are as follows. First, Customs must be made to realize that enhanced compliance with the customs laws by legitimate importers goes hand-in-hand with providing timely and accurate advice on what the customs laws require. Resurrection of the Customs Bulletin as a source of information and advice on customs issues would be very helpful, as would increased Customs resources devoted to responding to ruling requests and protest decisions. Second, Customs must understand that importers are eager to work with Customs to improve the administration of the customs laws, and that it is better to consult with importers about planned new rules and requirements than to issue regulations by telex, which cause significant disruption and invariably have to be fixed after the fact. To this end, NRMA suggests that Customs establish an importers' advisory committee which it could use as a "sounding board" for new policies and a source of input from those who would be affected by changes in the rules of the game. In this regard, we are delighted to see that Senator Bentsen has picked up on this suggestion, which we made during the Customs operations hearings held before the Senate Finance Committee in February, and has proposed in Section 2(c) of S. 829 to establish an "Advisory Committee on Commercial Operations" to advise Treasury on all matters involving Customs commercial operations. We urge the Committee to support Senator Bentsen's initiative.

Finally, at the least Customs must abandon "regulations by telex," and give importers notice and opportunity to comment on important new rules and requirements, out of concern for basic fairness and efficiency and regardless of whether it may be legally required.

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